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## **TRANSCRIPT OF RECORD**

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### **Supreme Court of the United States**

**OCTOBER TERM, 1951**

**No. 15, Miscellaneous**

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**FAR EASTERN CONFERENCE, UNITED STATES  
LINES COMPANY, STATES MARINE CORPORA-  
TION, ET AL., PETITIONERS.**

**vs.**

**THE UNITED STATES OF AMERICA AND FEDERAL  
MARITIME BOARD**

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**ON WRIT OF CERTIORARI UNDER 28 U.S.C. 1651 TO THE UNITED  
STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY**

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**MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI  
FILED JUNE 2, 1951.**

**MOTION FOR LEAVE TO FILE AND PETITION FOR WRIT OF CERTI-  
ORARI GRANTED OCTOBER 8, 1951.**





# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No.

FAR EAST CONFERENCE, UNITED STATES LINES  
COMPANY, STATES MARINE CORPORATION, ET  
AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA AND  
FEDERAL MARITIME BOARD

ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI  
UNDER U. S. C. 1651

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[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY**

Civil Action No. 11546

UNITED STATES OF AMERICA, Plaintiff,

v.

FAR EAST CONFERENCE, UNITED STATES LINES COMPANY,  
STATES MARINE CORPORATION, M. V. NONSUCO INC., LANCA-  
SHIRE SHIPPING CO., LTD., SKIBSAKTIESELSKAPET IGADÉ, A.  
F. KLAVENESS & CO. A/S, THE DE LA RAMA STEAMSHIP  
CO., INC., WATERMAN STEAMSHIP CORPORATION, PRINCE  
LINE, LTD., LYKES BROS. STEAMSHIP CO., INC., AMERICAN  
PRESIDENT LINES, LTD., SWEDISH EAST ASIATIC CO., LTD.,  
NEDERLANDSCHE STOOMVAART MAATSCHAPPIJ "OCEAAN" N.  
V., AKTIESELSKAPET IVARANS REDERI, ISTHMIAN STEAMSHIP  
COMPANY, ELLERMAN & BUCKNALL STEAMSHIP CO., LTD.,  
FEARNLEY & EGER, WILHELMSENS DAMPSKIBSAKTIESELSKAB,  
DAMPSKIBSSELSKABET AF 1912 A/S, THE BANK LINE, LTD.,  
THE CHINA MUTUAL STEAM NAVIGATION CO., LTD., SILVER  
LINE, LTD., THE OCEAN STEAMSHIP COMPANY, LTD., A/S  
BESCO, A/S DAMPSKIBSSELSKABET SVENDBORG, Defendants

COMPLAINT—Filed August 6, 1948

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and alleges:

[fol. 2]

I.

**Jurisdiction and Venue**

1. This complaint is filed and the jurisdiction of this court is invoked under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, commonly known and hereinafter referred to as the Sherman Antitrust Act, against the above-named defendants in order to prevent and restrain continuing violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.



2. The unlawful attempts to monopolize, combinations and conspiracies to monopolize, monopolization, and contracts, combinations and conspiracies to restrain trade and commerce of the United States with foreign nations, as more fully hereinafter described, have operated and have been and are being carried out in part within the District of New Jersey. Defendant United States Lines Company was organized and exists under the laws of the State of New Jersey, within said District, has its usual place of business within said District, and transacts business therein.

## II

### Description of Defendants

3. Defendant Far East Conference is a voluntary association and organization of steamship lines. Said defendant has its office and principal place of business at 11 Broadway, New York, New York.

[fol. 3] 4. Defendant American President Lines, Ltd., is a corporation organized and existing under the laws of the State of Delaware and has its principal office at 311 California Street, San Francisco, California.

5. Defendant The Bank Line, Ltd., is a corporation organized and existing under the laws of Scotland and maintains an office for the transaction of business at 24 State Street, New York, New York.

6. Defendant The China Mutual Steam Navigation Co. Ltd., is a corporation organized and existing under the laws of England and maintains an office for the transaction of business at 24 Broadway, New York, New York.

7. Defendant Dampskibsselskabet af 1912 A/S, is a corporation organized and existing under the laws of Denmark and maintains an office for the transaction of business at 30 Broad Street, New York, New York.

8. Defendant A/S Dampskibsselskabet Svendborg, is a corporation organized and existing under the laws of Denmark and maintains an office for the transaction of business at 30 Broad Street, New York, New York.

9. Defendant The De La Rama Steamship Co., Inc., is a corporation organized and existing under the laws of the Philippines and has its principal office at 90 Broad Street, New York, New York.

10. Defendant Ellerman & Bucknall Steamship Co., Ltd., is a corporation organized and existing under the laws of



Great Britain and maintains an office for the transaction of business at 26 Beaver Street, New York, New York.

[fol. 4] 11. Defendant Fearnley & Eger, is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 44 Whitehall Street, New York, New York.

12. Defendant A. F. Klaveness & Co. A/S, is a corporation organized and existing under the laws of Norway and has its principal office at 310 Sansome Street, San Francisco, California.

13. Defendant Isthmian Steamship Company, is a corporation organized and existing under the laws of the State of Delaware and maintains an office for the transaction of business at 71 Broadway, New York, New York.

14. Defendant Skibsaktieselskapet Igadi, is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

15. Defendant A/S Beseo, is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

16. Defendant Aktieselskapet Ivarans Rederi, is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

17. Defendant Lancashire Shipping Co. Ltd., is a corporation organized and existing under the laws of the United Kingdom and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

18. Defendant Lykes Bros. Steamship Co., Inc., is a corporation organized and existing under the laws of the State [fol. 5] of Louisiana and has its principal office at 925 Whitney Building, New Orleans, Louisiana.

19. Defendant Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., is a corporation organized and existing under the laws of the Philippines and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

20. Defendant M. V. Nonsuco Inc., is a corporation organized and existing under the laws of the Philippines and maintains an office for the transaction of business at 19 Rector Street, New York, New York.

21. Defendant The Ocean Steamship Company, Ltd., is a corporation organized and existing under the laws of Great Britain and maintains an office for the transaction of business at 25 Broadway, New York, New York.

22. Defendant Prince Line, Ltd., is a corporation organized and existing under the laws of England and maintains an office for the transaction of business at 34 Whitehall Street, New York, New York.

23. Defendant Silver Line, Ltd., is a corporation organized and existing under the laws of England and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

24. Defendant States Marine Corporation, is a corporation organized and existing under the laws of the State of New York and maintains an office for the transaction of business at 90 Broad Street, New York, New York.

25. Defendant Swedish East Asiatic Co., Ltd., is a corporation organized and existing under the laws of, the [fol. 6] Philippines and has its principal office at 90 Broad Street, New York, New York.

26. Defendant United States Lines Company, is a corporation organized and existing under the laws of the State of New Jersey and has its principal office at 51 Newark Street, Hoboken, New Jersey.

27. Defendant Waterman Steamship Corporation, is a corporation organized and existing under the laws of the State of Alabama and has its principal office at Merchants National Bank Building, Mobile, Alabama.

28. Defendant Wilhelmsens Dampskibsaktieselskab, is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

### III

#### The Trade and Commerce Involved

29. Each of the corporate defendants is engaged as a common carrier by water in the transportation of property in foreign trade from the Atlantic Coast and Gulf ports of the United States to the ports of Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China, and the Philippine Islands, hereinafter sometimes called the "outbound Far East trade." The corporate defendants are associated

together in the defendant Far East Conference, under an agreement known as United States Maritime Commission Conference Agreement No. 17, approved November 14, 1922, under the provisions of Section 15 of the Shipping Act, 1916, as amended. A true copy of said Agreement, as amended to December 4, 1947, is attached to this complaint as Exhibit A, and is made a part hereof. The membership, [fol. 7] of the defendant Far East Conference includes all but one of the common carrier shipping lines regularly engaged in the transportation of property in the outbound Far East trade and the members of the defendant Far East Conference carry virtually all the commercial tonnage transported by shipping lines engaged in that trade.

30. The principal commodities transported by defendants in the outbound Far East trade are industrial machinery, agricultural machinery and equipment, road building machinery, electrical machinery and fixtures, automobiles, office equipment, textiles, steel and iron products, paper products, petroleum products, fertilizer and other manufactured goods and products of American industry and agriculture.

#### Offenses Charged

31. Defendants have for several years past unlawfully combined and conspired, and have, and are now, engaged in an unlawful combination and conspiracy in restraint of trade and commerce of the United States with foreign nations in the transportation of property in the outbound Far East trade in violation of Section 1 of the Act of July 2, 1890, as amended, known as the Sherman Antitrust Act; and defendants have for several years past unlawfully combined and conspired, and have, and are now, engaged in an unlawful combination and conspiracy to monopolize, and have attempted and are now attempting to monopolize, and have monopolized said trade and commerce in violation of Section 2 of the Act of July 2, 1890, as amended, known as the Sherman Antitrust Act.

[fol. 8] 32. The aforesaid combination and conspiracy to restrain trade and commerce of the United States with foreign nations, the combination and conspiracy to monopolize, attempts to monopolize, and monopolization of such trade and commerce, consist of a continuing agreement and concert of action among the defendants to control the transportation of all cargo in the outbound Far East trade



by establishing and maintaining a system of "contract rates" and higher "non-contract rates," the sole consideration for the enjoyment of the lower "contract rates" being the agreement of the shipper to patronize members of the Far East Conference exclusively in effecting the shipper's transportation requirements in the outbound Far East trade.

33. By their combined economic power, exerted through the aforesaid coercive rate differentials, the defendants have, pursuant to the combination and conspiracy herein alleged, induced and compelled shippers in the outbound Far East trade to enter into freight agreements with the defendant Far East Conference, for and on behalf of its members, obligating such shippers to patronize members of the defendant Far East Conference exclusively, and have enforced the said obligation of such shippers by threatening the withdrawal of "contract rates" and the imposition of oppressive fines and penalties for any deviation by such shippers from the terms of said agreement. A true copy of the form of said freight agreements, revised as of August 15, 1945, is attached to this complaint as Exhibit B, and is made a part hereof.

[fol. 9] 34. The purpose and object of the aforesaid combination and conspiracy has been and is to drive out of and exclude from participation in the outbound Far East trade, and to eliminate from competition therein, steamship lines not parties to said unlawful combination and conspiracy, and thereby to achieve and maintain a monopoly of the transportation of cargo in said trade.

35. Through the aforesaid exclusive patronage contracts and the threat of oppressive fines and penalties for deviation therefrom, the defendants have eliminated competition in the transportation of cargo in the outbound Far East trade and have thereby unlawfully restrained and monopolized the foreign trade of the United States from its Atlantic and Gulf ports to the ports of Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China and the Philippine Islands.

#### IV

##### Effects of the Conspiracy

36. The unlawful combination and conspiracy in restraint of trade, combination and conspiracy to monopolize, at-



tempts to monopolize, and monopolization described above have, as intended by the defendants, prevented other shipping lines from competing with the defendants in the outbound Far East trade:

### Prayer

WHEREFORE, the Plaintiff prays:

1. That a summons issue to each of the defendants commanding each of them to appear herein and to answer the [fol. 10] allegations contained in this complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That upon final hearing of this cause, the Court order, adjudge and decree that the combination and conspiracy herein described exist and constitute an attempt to monopolize, combination and conspiracy to monopolize, and monopolization, and an unreasonable and unlawful restraint of the trade and commerce of the United States with foreign countries in violation of Sections 1 and 2, of the Sherman Antitrust Act;

3. That the defendants herein and each of them, and their officers, directors, representatives, agents, and all persons and corporations acting or claiming to act on behalf of them, be perpetually enjoined and restrained from monopolizing, attempting to monopolize, combining and conspiring to monopolize, or agreeing, conspiring or combining to restrain the trade and commerce of the United States in the manner and by the means described herein;

4. That the exclusive patronage contracts be cancelled, and that the defendants be perpetually enjoined from entering into any other contracts or participating in agreements, understandings, practices or arrangements having a tendency to continue or revive any of the aforesaid violations of the Sherman Antitrust Act.

5. That the defendants be required, within 60 days from the date of the judgment to be entered herein, to send to each shipper which is a party to one of the said exclusive patronage contracts a true copy of such judgment, and at [fol. 11] the same time, in a form approved by the Court, to notify each such shipper that its contract has been cancelled and that it may make shipments by any line without incurring the fines and penalties provided in said contract.

6. That plaintiff have such other and further relief as the nature of the case may require and as to the Court may seem proper; and

7. That plaintiff recover its costs of this suit.

James E. Kilday, Special Assistant to the Attorney General; Joseph E. McDowell, Trial Attorney; Carolyn R. Just, Attorney.

Tom C. Clark, Attorney General; Herbert A. Bergson, Assistant Attorney General; Isaiah Matlack, United States Attorney.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 12]

# EXHIBIT A TO COMPLAINT

## Far-East Conference Agreement

This Memorandum of Agreement, made in the City of New York, by and between the parties signatory hereto, on the first day of September in the year one thousand nine hundred and twenty-two.

### Witnesseth:

That the parties hereby associate themselves together in a Far-East Conference, to promote commerce between the North Atlantic, South Atlantic and Gulf ports of the United States of America and the ports of Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China, and the Philippine Islands, for the common good of shippers and carriers, by providing just and economical co-operation between the steamship lines operating in such trades; and to the accomplishment of that end the parties hereby severally agree with each other as follows:

1. All freight or other charges for the transportation of cargo between the aforementioned ports shall be charged and collected by the parties hereto strictly in accordance with the tariff of rates and charges agreed to by the parties.

<sup>1</sup> Preamble as modified by Conference Agreements Nos. 17-3 and 17-4 approved December 18, 1929, and September 3, 1930.

2. There shall be no unjust discrimination against, and no rebates of freight or compensation shall be paid to, any shipper, contractor, broker, consignee, or other receiver of merchandise, by any of the parties hereto.

[fol. 13] 3. No cargo shall be accepted for carriage at less than its actual gross weight or measurement as provided in the tariffs, and no payment of freight shall be received in any currency other than that of the United States, or its equivalent, by any of the parties hereto.

4. There shall be no payment or refund in respect of freight or compensation received, and no absorption at loading or discharging ports of rail or coastal steamer freights or other charges, directly or indirectly, by any of the parties hereto.

5.<sup>2</sup> No freight brokerage shall be paid in excess of one and one-quarter per cent ( $1\frac{1}{4}\%$ ) on the amount of freight earned by the initial carrier, but not including transshipment freight, unless otherwise authorized by a majority of the parties hereto at a regular meeting of the Conference.

6. The parties hereto shall meet together regularly in conference on the first and third Wednesdays of each calendar month, at 11:00 A. M., in rooms in the City of New York to be designated by the Chairman of the Conference. If any regular meeting falls on a legal holiday, the meeting shall be held at the same hour and place on the next business day.

7.<sup>3</sup> The Conference shall, by a vote of two-thirds of their number, select a Chairman who shall not be interested in or employed by, or in any way connected with, any member of the Conference or any agent or any representative thereof. Such Chairman shall be elected to serve for such period of time and at such rate of compensation as shall be fixed in the agreement between the Chairman and the members of the Conference. The Chairman shall be the executive officer of the Conference and shall preside over the meetings of the Conference and shall be, ex officio, a member of any and all standing and special committees of the

<sup>2</sup> Article 5 as modified by Conference Agreement No. 17-5 approved May 20, 1931.

<sup>3</sup> Article 7 as modified by Agreement 17-11 approved March 19, 1946.



Conference. The Chairman shall designate the representatives of the members who shall constitute any and all committees that may be authorized by Conference action. All determinations by the Conference shall be communicated to the shippers exclusively by the Chairman. The Chairman shall have access to such records, in the offices and on the piers of the parties hereto, the inspection of which by him shall be reasonably necessary to enable him to determine that the members of the Conference are respectively abiding by the terms and provisions of this agreement, and the right to make such copies of, and extracts and transcripts from, such records as he may determine advisable, and each of the parties hereto agrees to furnish to the Chairman, or to such persons as he may designate for said purpose, such access and such right. In addition to or in modification of the duties and authorities in this Agreement provided, the Chairman shall have such other or different authority and duties as shall be fixed and determined by a vote of two-thirds of the members of the Conference. The Chairman shall employ a Secretary, subject to the approval of the Conference, who shall act as the Secretary of the Conference. The Secretary shall keep a minute record of the proceedings of all meetings, including all votes on matters coming before the Conference, and shall otherwise act in accordance with the direction of the Chairman. Copies of all minutes, records, tariffs, regulations and other documents, shall be furnished to the members of the Conference by the Chairman upon the request therefor in writing, and shall be furnished by the Chairman to the governmental agency for the time being charged [fol. 15] with the administration of the Shipping Act, 1916, as amended.

8.4 The parties hereto shall consider and pass upon any matter involving discriminations, tariffs, freights, brokerages, or other charges, or the regulation of transportation between the aforementioned ports at any meeting of the Conference, provided that notice in writing, descriptive of the matter to be considered, has been given each party hereto by the Secretary, at the direction of the Chairman, at not later than 4 P. M. of the day prior to the date of meeting; and the Chairman shall cause such notice to be

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\* Article 8 as modified by Agreements 17-5 approved May 20, 1931, and Agreement No. 17-11 approved March 19, 1946.



given on the request of any party hereto made in writing to the Chairman not later than 11:00 A. M. of the day prior to the date of meeting. If all of the parties hereto are present at any meeting, action may be taken on any matter within the scope of this agreement without prior notice thereof. Any matter or thing brought before the meeting in the manner aforesaid and agreed to by a majority of the parties hereto, shall thereby become an agreement binding upon all of the parties hereto, with the same force and effect as if expressly made a part of this agreement.

9.<sup>5</sup> Pursuant to recommendations made by the Chairman, or pursuant to the recommendation of any Committee or Sub-Committee authorized by a majority vote of the parties [fol. 16] hereto and appointed as provided in Article 7 hereof, or without any recommendation, the parties shall establish tariffs of freight rates, charges, brokerages, transportation regulations and/or any other matter within the scope of the agreement by the affirmative vote of the majority of their number, at any meeting held in accordance with the provisions of Article 8 hereof, and all of the parties hereto agree that they will be bound by the affirmative vote of the majority of their number upon the matters aforesaid with the same force and effect as if expressly made a part hereof.

10. The parties hereto each agree to deposit with the Chairman the sum of \$25,000.00 in United States Government Bonds, or in cash, which shall be deposited or invested as may be agreed by a majority of the parties hereto at any regular meeting of the Conference, and the interest accruing thereon shall be paid to the parties making such deposit, immediately upon receipt of such interest by the Chairman.

Any Party which has deposited cash or United States Government Bonds, as aforesaid, may, upon notification to,

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<sup>5</sup> Article 9 as modified by Conference Agreements Nos. 17-5, 17-9, and 17-11, approved May 20, 1931, May 10, 1934, and March 19, 1946, respectively. Article 10 as modified by Conference Agreements Nos. 17-1, 17-5, 17-7, and 17-8 approved September 7, 1927, May 20, 1931, February 3, 1932, and January 25, 1933. Suspended for duration of hostilities by Conference Agreement 17-10 approved June 11, 1942; reinstated and amended by agreement No. 17-16, approved July 16, 1946.

and under approval of the Conference, substitute therefor \$25,000 in other bonds, provided, however, that the party making the substitution hereby agrees upon call of the Conference to supplement or revise such substitute deposit to a minimum ready market value of \$25,000 U. S. currency.

Subject to the acceptance and approval by the Conference, any party to this Agreement may deposit a surety bond in the amount of \$25,000 in lieu of cash or bonds hereinbefore provided for.

11. Inasmuch as it will be impossible to ascertain or measure the amount of damages which the parties hereto will suffer by reason of the breach of this agreement, the parties hereto expressly agree that the damages suffered [fol. 17] thereby by each party hereto shall be, and they hereby are, liquidated at a prorata part, based on the number of parties hereto, not including the party committing the breach, of a sum equal to four times the amount of freight moneys, or other compensation, which the party committing such breach shall receive for the transportation of any cargo with respect to which such breach shall occur.

12.<sup>a</sup> The parties hereto agree to submit at any time the question as to whether this agreement has been breached by any of them, and the amount of damages thereby suffered by the other parties, to the determination of the Arbitration Committee of the New York Produce Exchange, as provided in an act entitled "An Act to Incorporate the New York Commercial Association," passed April 19, 1862, and being Chapter 359 of the Laws of 1862 of New York, as amended by an act entitled "An Act to amend Chapter 359 of the Laws of 1862, entitled 'An Act to Incorporate the New York Commercial Association', in relation to the powers and duties of the Arbitration Committee of such corporation, now known as New York Produce Exchange", passed April 12, 1912, and being Chapter 291 of the Laws of 1912 of New York; or, in lieu thereof, if the Chairman and the party charged with the breach so agree in writing, the question of breach and damages shall be left to the determination of two arbitrators, one to be nominated by a majority of the parties hereto, one by the party charged, and a third, to act as umpire, by the two so chosen, as provided by an act entitled "An Act in relation to arbitration, constituting

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<sup>a</sup> Article 12 as modified by Conference Agreement No. 17-5 approved May 20, 1931.

chapter seventy-two of the Consolidated Laws", and being Chapter 275 of the Laws of 1920 of New York. The Chair-[fol. 18] man shall, when so directed by a vote of a majority of the parties hereto, in his name and on behalf of each and every of the parties hereto, other than the one charged with the breach file a complaint with the Arbitration Committee of the New York Produce Exchange, unless the parties shall have agreed to submit the controversy to arbitrators nominated as aforesaid, in which case the complaint shall be filed with the umpire, succinctly setting forth the facts of such breach, as charged, and thereupon and thereafter proceedings shall be had before said Arbitration Committee in accordance with the aforesaid statutes and the charter and bylaws of the New York Produce Exchange, or, as the case may be, before said nominated arbitrators in accordance with the laws of New York.

13. The parties hereto agree that said Arbitration Committee, or said nominated arbitrators, as the case may be, shall be, and they hereby are, authorized to determine whether this agreement has been breached by the party charged therewith, and to fix the amount of damages suffered by the other parties hereto at the amount to which they are liquidated as hereinbefore provided.

14. The parties hereto agree to accept and abide by the award of said Arbitration Committee of the New York Produce Exchange, or of the nominated arbitrators, if the arbitration is had before them, and further agreed that a judgment of the Supreme Court of the State of New York may be entered upon any award made pursuant to such submission before either the said Arbitration Committee, or said nominated arbitrators, as provided by the laws of New York.

15. The parties hereto agree that any judgment entered in conformity with any such award shall not be removed, reversed, modified or in any manner appealed from by the [fol. 19] parties hereto, except for fraud, collusion or corruption of said Arbitration Committee or of some member thereof, or of one or more of said nominated arbitrators.

16. Unless the party held guilty of a breach of this agreement, as aforesaid, shall pay the damages awarded by said Arbitration Committee of the New York Produce Exchange, or by said nominated arbitrators, as hereinbefore provided, within ten days after written notice of the character and



amount of the judgment entered on any award has been served by the Chairman upon the party in default, then execution may issue on such judgment against the goods of chattels of the judgment-debtor, in accordance with the laws of New York, and the rules and practices prevailing in the Supreme Court of the State of New York, for the enforcement of the judgments of said court; and levy of such execution may be made upon the \$25,000 which has been deposited by the party in default, as hereinbefore provided, with the Chairman.

17.<sup>1</sup> The Chairman or any other person designated by a majority of the parties hereto, shall be entitled to examine any of the books, records, accounts and documents of any party hereto charged with a breach of this agreement, by the filing of a complaint, as hereinbefore provided, for the purpose of adducing evidence in support of any such charge, and the refusal of the party charged with such breach to permit any such examination shall constitute a breach of this agreement, and shall be subject to the filing of a complaint and proceedings before the Arbitration Committee of the New York Produce Exchange, or other nominated arbitrators, and an award and judgment for damages, as herein-[fol. 20] before provided with respect to any other breach of this agreement.

18. The testimony of any party charged by the filing of a complaint with a breach of this agreement, or of any other party hereto, or of any other person, firm, or corporation, may be taken by deposition before trial in the arbitration proceedings, in the same manner and on the same grounds as provided by the laws of New York, for the taking of depositions before trial to be used in actions pending in any court of record of said state.

19. The expenses of the arbitration, including a reasonable allowance for attorneys' fees, shall be determined by the arbitrators and entered in the award, and shall become a part of the judgment thereon.

20. The expenses of maintaining and carrying on the Conference shall be paid prorata by all the parties hereto.

21.<sup>2</sup> Any party to this agreement may be eliminated herefrom by the agreement of a majority of the parties hereto,

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<sup>1</sup> Article 17, as modified by Conference Agreement No. 17-5 approved May 20, 1931.



provided that reasonable cause therefor first shall have been shown. Violation of any of the rules or regulations agreed to by the parties hereto, or failure to permit the examination of the books, records, accounts and documents, or to submit to the taking of any deposition, as hereinbefore provided, or to participate in and abide by the results of any arbitration, shall constitute grounds for such elimination. In the event of such elimination, the \$25,000 deposited with the Chairman, or any balance thereof remaining on deposit, together with accrued interest thereon, shall be refunded to the eliminated party, providing that there is not pending against him any undetermined charge of a breach of this agreement which prima facie may result in a judgment for damages.

[fol. 21] 22.<sup>a</sup> Any of the parties hereto may withdraw from this agreement by giving 60 days notice of intention to withdraw in writing to the Chairman. At the expiration of said period of 60 days the party thus giving said notice shall cease to be bound by this agreement, but shall, none the less, remain liable for any breach or violation of this agreement theretofore committed by him. It is therefore further provided that the \$25,000 deposited with the Chairman or any balance thereof remaining on deposit at the date when said notice is given shall remain on deposit for a period of 90 days after the giving of said notice and if at the expiration of said 90 days a complaint is pending against the company which gave such notice or if an award of the Arbitration Committee of the New York Produce Exchange or of the nominated arbitrators against such company remains unsatisfied by it, the \$25,000 or any balance thereof remaining on deposit with the Chairman shall be retained by the Chairman until such complaint is dismissed or the award is satisfied. At the expiration of said period of 90 days if no complaint be then pending against the company which gave such notice or if no award against such party remain unsatisfied or upon the dismissal of the complaint pending against the party or the satisfaction of an award made against him and remaining unsatisfied at the end of said 90 days, the said sum of \$25,000, deposited with the Chairman or any balance thereof remaining on deposit shall be re-

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<sup>a</sup> Articles 21 and 22 as modified by Conference Agreement No. 17-5 approved May 20, 1931.

funded to the withdrawing party. The parties mutually agree that any act or omission of a party hereunder which shall not be made the subject of a complaint against any party within 90 days after the giving of notice in writing as above provided shall not at any time thereafter be made the [fol. 22] basis of any arbitration action or proceeding; but on the other hand at the expiration of said 90 days any right or cause of action under this agreement based upon such act or omission shall be completely extinguished.

23. This agreement shall not be valid and binding upon the parties hereto unless and until it has been approved by the United States Shipping Board in accordance with the provisions of Section 15 of the Shipping Act, 1916, and all the parties hereto shall have made the deposit as hereinbefore provided.

24.<sup>a</sup> Any person, firm or corporation may hereafter become a party to this agreement by the consent of a majority of the parties hereto, by affixing his signature hereto, and by depositing the sum of Twenty-five thousand (\$25,000) Dollars in United States Government bonds, or in cash, with the Chairman as provided by Article 10 hereof.

25. This agreement may be executed in several parts, and the said parts shall read and be effectual as one instrument.

In witness whereof the parties hereto have caused this agreement to be executed by their respective officers or agents thereunto duly authorized, the day and year herein first above written.

[fol. 23]

## EXHIBIT B TO COMPLAINT

### Far East Trade Agreement

Contract No.

Memorandum of Agreement, made the ..... day of ..... 19....., by and between ..... hereinafter called the Shipper, and Members of Far East Conference, designated below and hereinafter called the .....

<sup>a</sup> Article 24 as modified by Conference Agreement No. 17-5 approved May 20, 1931. Addenda pertaining to Freedom of Action in meeting non-conference competition approved as Conference Agreement No. 17-6 on October 1, 1931, cancelled by Order dated January 14, 1935.

Carriers, it being understood and agreed to by the Shipper and by the Carriers that if the Far East Conference add any additional line or lines to their membership, such line or lines shall thereby become party to this agreement, and the Shipper shall have the right to request shipping space of such line or lines as in this agreement provided; and should any line or lines cease to be members of said Conference, all future rights under this agreement of such line or lines, and of the Shipper as to any such line or lines, shall thereupon terminate.

1. The Shipper, in consideration of the rates and other conditions stated herein agrees to forward by vessels of the Carriers all shipments made, directly or indirectly, by him, his agents, subsidiary, associated and/or parent companies and shipped from United States ports, excepting, however, Pacific Coast ports, to ports in Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China, and Philippine Islands.

The commodities involved, the estimated quantities, and the rates and conditions to govern are shown on the attached supplement or supplements. It is mutually understood and agreed that if shipper should subsequently for, [fol. 24] ward any commodity other than those shown on attached supplement or supplements, said shipments are considered to be part of this agreement, and therefore entitled to the lowest rate then in effect on such commodity without requiring shipper to conclude a supplemental agreement with the Carriers.

2. The rates of freight named or provided for hereunder are subject to being increased reasonably from time to time by the Carriers giving the Shipper written notice thereof not less than thirty days in advance of the increase. Increases shall be deemed accepted by the Shipper unless he notifies the Carriers to the contrary within ten days from the receipt of said notice. Within said ten days, the Shipper may give the Carriers written notice of cancellation of this contract as of the effective date of the increased rate or rates, subject, nevertheless, to option on the part of the Carriers declarable not less than ten days prior to the effective date of the increased rate or rates, either to accept cancellation, or to continue this contract under the rates in effect when notice of increase be given.



Should the Carriers during the term of this agreement reduce rates on any of the commodities named, the Shipper shall be given the full benefit of such reduced rates during the period the same remain in effect.

3. The Shipper has the option of selecting any of the vessels operated by any of the respective carriers who, at time of shipment, are members of the Far East Conference, provided that required space to port of destination is available either direct or with transshipment when Shipper makes application therefor. Shipper is further required to reach agreement with respective carrier as to quantity per vessel, port or ports of loading, port or ports [fol. 25] of discharge, and to apply for said freight space as early as practicable before vessel's advertised sailing date. If the carriers fail to furnish space after the Shipper duly applies therefor, the Shipper shall be free with respect to such shipment to secure space elsewhere without prejudice to his right to future shipments under this agreement, provided that Shipper first notifies the office of the Far East Conference at New York and allows the Conference Secretary forty-eight hours from receipt of such notice to confirm that said space is not available.

4. If the Shipper shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the Shipper shall be liable to the transporting carriers for payment of additional freight on all commodities theretofore shipped with such carriers for a period not exceeding twelve months immediately preceding the date of such shipment, at the non-contract rate or rates on all commodities set forth in the current tariffs of the transporting carriers in force at the time of such shipments.

5. Shipments under this Agreement are subject to all the terms and conditions contained in the respective Carrier's engagement note, permit, dock receipt and/or regular form of bill of lading, in use by the Carrier when shipments are tendered.

6. In the event of any hostilities breaking out or threatening to break out, in which the United States and/or Great Britain and/or Japan and/or China and/or Indo-China and/or Russia and/or their Colonies are involved, or by which the Carrier's interests are affected, the Carriers have the option of cancelling this agreement.

[fol. 26] 7. In compliance with Section 16 of the "Ship-

ping 'Act, 1916,' payment by the Carriers and the acceptance of freight brokerage by the broker is with the strict understanding that no part of the brokerage thus collected shall revert to the Shipper or to the consignee, and that the business of the broker is in no sense subsidiary to or affiliated with that of the Shipper or of the consignee.

8. In the event of any disputes pertaining to, and arising during the existence of this contract, said disputes shall be referred to a board of three arbitrators, one of whom shall be appointed by each party to the contract and the two so nominated shall choose the third to act as umpire. The decision of any two of these as to the imposition of penalties and/or the enforcements of awards shall be final and binding upon both parties to this contract, and for the purpose of enforcing awards will be made a rule of the Court.

9. This Agreement, subject to the conditions set forth herein, may be terminated upon thirty (30) days written notice by the Shipper, or by all of the carriers or by any one or more of the Carriers (in which case such cancellation shall be effective only as to the notifying Carriers). If this Contract shall be terminated as to some, but not all, Carriers, the Shipper shall be at liberty to ship by such terminating Carriers so long as such terminating Carrier or Carriers remain members of the Far East Conference without thereby violating this Contract.

10. In the event of threat, existence or continuance of any present or future war or war-like conditions or hostilities or civil commotion, or measures taken by any Government in consequence thereof or in connection therewith, or the existence or continuance of conditions which, in the opinion of any one or more of the Carriers, indicates that there is a danger of any of the foregoing, which may impede, obstruct or delay, or render impossible or hazardous performance of its or their obligations due to the requisition, seizure or loss of any of the vessels of any one or more of the Carriers, or any other cause whatsoever whether similar or dissimilar, or which, in the sole judgment of any one or more of the Carriers, may directly or indirectly result in the imposition upon it or them of any undue financial or other hardship or burden in the performance of its or their obligations, any one or more of the Carriers shall have the option of forthwith cancelling this Agreement as to it or them. If this Agreement shall be

cancelled as to some but not all of the Carriers the Shipper shall be at liberty to ship by such cancelling Carrier or Carriers so long as such cancelling Carrier or Carriers remain members of the Far East Conference without thereby violating this Agreement:

List of Carriers:

.....	(Shipper)
By .....	Title
For and on Behalf of Mem-	(Address of
bers of Far East Conference:	Shipper)
By .....	
11 Broadway, New York 4,	
N. Y.	
(Address of Shipper Must	Subsidiary Associated
Be Shown on Contract)	And/Or Parent Com-
Revised Form. Aug. 15, 1945.	panies:

[fol. 28]

(ATTACHED SUPPLEMENT)

Far East Conference

Tariff Item No. 450.

Contract No. ....

Commodity: Cargo, not otherwise specified in Tariff.

Approximate quantity ..... tons per year.

Effective Oct. 1, 1945.

RATES TO FAR EAST PORTS

Discharging Ports:

Yokohama, Kobe, Osaka, Hongkong, Manila	33.00
Shanghai	34.00
Cebu, Iloilo	37.80
Dairen (Dalny)	37.00

For rates to ports in Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China, and Philippine Islands, other than named above, apply to Conference Office.

All rates are to be prepaid in United States dollars per ton of 2,000 lbs, or 40 cu. ft., ship's option.



Individual packages over 35 ft. in length and/or over four (4) tons of 2,000 lbs. shall be assessed the additional tariff charge in effect at time of shipment.

Revised as of Oct. 1, 1945.

[fol. 29] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

ANSWER—Filed October 1, 1948

Far East Conference, United States Lines Company, States Marine Corporation, M. V. Nonsuco Inc., Lancashire Shipping Co., Ltd., Skibsaktieselskapet Igadi, A. F. Klavness & Co. A/S, The De La Rama Steamship Co., Inc., Waterman Steamship Corporation, Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co., Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskapet Ivarans Rederi, Ellerman & Bucknall Steamship Co., Ltd., Fearnley & Eger, Wilhelmsens Dampskibsaktieselskab, Dampskibsselskabet af 1912 A/S, The Bank Line, Ltd., The China Mutual Steam Navigation Co., Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco and A/S Dampskibsselskabet Svendborg, defendants above named, answering the complaint herein by Milton, McNulty & Augelli, their attorneys; allege:

First: Deny that the facts alleged in the complaint constitute a basis upon which the jurisdiction of this Court may be invoked under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended, commonly known as the Sherman Anti-trust Act, or constitute violations by the defendants, jointly or severally, of Sections 1 and 2 of said Act; and except to the extent in this Paragraph First specifically denied, deny each and every allegation contained in the paragraph of the complaint numbered "1".

Second: Admit that the defendant, United States Lines Company, was organized and exists under the laws of the

State of New Jersey within the District of New Jersey, and has a place of business in said district and transacts business therein; and except as in this Paragraph Second specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "2".

Third: Admit that defendant, Far East Conference, has its office and principal place of business at 11 Broadway, New York, New York; and except as in this Paragraph Third specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "3".

Fourth: Admit that defendant, The Bank Line, Ltd., is a corporation organized and existing under the laws of Scotland and that it is represented by an agent who maintains an office for the transaction of business at 24 State Street, New York, New York; and except as in this Paragraph Fourth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "5".

Fifth: Admit that defendant, The China Mutual Steam Navigation Co. Ltd. is a corporation organized and existing under the laws of England and that it is represented by an agent who maintains an office for the transaction of business at 25 Broadway, New York, New York; and except as in this Paragraph Fifth specifically admitted, deny each and every allegation contained in the paragraph of the complaint numbered "6".

Sixth: Admit that defendants, Dampskibsselskabet af 1912 A/S and A/S Dampskibsselskabet Svendborg, are corporations organized and existing under the laws of Denmark and that they are represented by an agent who maintains an office for the transaction of business at 30 Broad Street, New York, New York; and except as in this [fol. 31] Paragraph Sixth specifically admitted, deny each and every allegation contained in the paragraphs of the complaint numbered "7" and "8".

Seventh: Admit that defendant, The De La Rama Steamship Co., Inc., is a corporation organized and existing under the laws of the Philippines and has an office at 90 Broad Street, New York, New York; and except as in this Paragraph Seventh specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "9".

Eighth: Admit that defendant, Ellerman & Bucknall Steamship Co. Ltd. is a corporation organized and existing under the laws of Great Britain and that it is represented by an agent who maintains an office for the transaction of business at 26 Beaver Street, New York, New York; and except as in this Paragraph Eighth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "10".

Ninth: Deny each and every allegation set forth and contained in the paragraph of the complaint numbered "11".

Tenth: Admit that defendant, A. F. Klaveness & Co. A/S, is a corporation organized and existing under the laws of Norway and that it is represented by an agent who has an office for the transaction of business at 310 Sansome Street, San Francisco, California; and except as in this Paragraph Tenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "12".

Eleventh: Admit that defendants, Skipsaktieselskapet Igadi A/S Besco and Aktieselskapet Ivaråns Rederi, are corporations organized under the laws of Norway and that they are represented by an agent who maintains an office for the transaction of business at 17 Battery Place, New York, New York; and except as in this Paragraph Eleventh specifically admitted, deny each and every allegation set forth and contained in the paragraphs of the complaint numbered "14", "15" and "16".

Twelfth: Admit that defendant, Lancashire Shipping Co. Ltd., is a corporation organized and existing under the laws of the United Kingdom and that it is represented by an agent who maintains an office for the transaction of business at 52 Broadway, New York, New York; and except [fol. 32] as in this Paragraph Twelfth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "17".

Thirteenth: Admit that defendant, Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V. is a corporation organized and existing under the laws of Holland, and that defendant, The Ocean Steamship Company, Ltd., is a corporation organized and existing under the laws of Great Britain, and that both said corporations are represented by an agent who maintains an office for the transaction of business at 25 Broadway, New York; New York; and except as in this Paragraph Thirteenth specifically admitted, deny each and



and every allegation set forth and contained in the paragraphs of the complaint numbered "19" and "21".

Fourteenth: Admit that defendant, M. V. Nonsuco, Inc., is a corporation organized and existing under the laws of the Philippines and that it is represented by an agent who maintains an office for the transaction of business at 19 Rector Street, New York, New York; and except as in this Paragraph Fourteenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "20".

Fifteenth: Admit that defendant, Prince Line, Ltd., is a corporation organized and existing under the laws of England and that it is represented by an agent who maintains an office for the transaction of business at 34 Whitehall Street, New York, New York; and except as in this Paragraph Fifteenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "22".

Sixteenth: Admit that defendant, Silver Line, Ltd., is a corporation organized and existing under the laws of England and that it is represented by an agent who maintains an office for the transaction of business at 17 Battery Place, New York, New York; and except as in this Paragraph Sixteenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "23".

Seventeenth: Admit that defendant, Swedish East Asiatic Co., Ltd. is a corporation organized and existing under the laws of Sweden and that it is represented by an agent who maintains an office for the transaction of business at 90 Broad Street, New York, New York; and except as in this [fol. 33] Paragraph Seventeenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "25".

Eighteenth: Admit that defendant, Wilhelmsens Dampskibsselskab, is a corporation organized and existing under the laws of Norway and that it is represented by an agent who maintains an office for the transaction of business at 17 Battery Place, New York, New York; and except as in this Paragraph Eighteenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "28".

Nineteenth: Admit that defendants, United States Lines Company, States Marine Corporation, Lancashire Shipping

Co. Ltd., Skibsaktieselskapet Igadi, The De La Rama Steamship Co., Inc., Waterman Steamship Corporation, Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co., Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskapet Ivarans Rederi, Isthmian Steamship Company, Ellerman & Bucknall Steamship Co., Ltd., Wilhelmsens Dampskibsaktieselskab, Dampskibsselskabet af 1912 A/S, The Bank Line, Ltd., The China Muthal Steam Navigation Co., Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco and A/S Dampskibsselskabet Svendborg, who are hereinafter for convenience collectively referred to as "The Member Lines," are engaged as common carriers by water in the transportation of property in foreign trades from Atlantic Coast and Gulf ports of the United States to ports of Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China, and the Philippine Islands, which trades are referred to in the complaint herein and sometimes in this answer as the "outbound Far East trade"; that The Member Lines, together with persons who are not parties to this action, are presently parties to an agreement known as United States Maritime Commission Conference Agreement No. 17, approved November 14, 1922 under the provisions of Section 15 of the Shipping Act, 1916, as amended, which, as originally executed and from time to time amended and supplemented, will hereinafter for brevity be referred to as the "Far East Conference Agreement", and a substantially true copy of which, as amended to December 4, 1947, is attached to the complaint herein as Exhibit A; that the parties to the Far East Conference Agreement, as aforesaid, at the time of the commencement of this suit, included all but one of the common carriers engaged with reasonable regularity in the transportation [fol. 34] of property in the outbound Far East trade, and carry the major portion of all commercial cargoes transported in that trade; and except as in this Paragraph Nineteenth specifically admitted, deny each and every allegation set forth and contained in the paragraph of the complaint numbered "29". The defendants reserve the right to offer in evidence upon the trial of this suit a true and accurate copy of the Far East Conference Agreement and all amendments thereof.

Twentieth: Deny each and every allegation set forth

and contained in the paragraph of the complaint numbered "31".

Twenty-first: Admit that the parties to the Far East Conference Agreement, acting under and pursuant to that agreement, have included in their tariffs with respect to most commodities, both contract rates and non-contract rates; that contract rates are lower than non-contract rates; that the contract rates are available only to shippers who enter into an agreement with the parties to the Far East Conference Agreement which, as the same has been from time to time and will hereafter be amended, is hereinafter referred to as the Far East Freight Agreement; and that Exhibit B attached to the complaint, is a substantially accurate copy of the form of the Far East Freight Agreement, revised as of August 15, 1945; and except as in this Paragraph Twenty-first specifically admitted, deny each and every allegation set forth and contained in the paragraphs of the complaint numbered "32", "33", "34", "35" and "36". The defendants reserve the right to offer in evidence upon the trial of this action a true and accurate copy of the Far East Freight Agreement as the same has been from time to time amended.

As and for a First Separate and Complete Defense, the Defendants Answering Hereby Allege:

Twenty-second: Heretofore and on or about September 1, 1922, the defendants Prince Line, Ltd. and Ellerman & Bucknall Steamship Co., Ltd. together with the United States Shipping Board, Merchant Fleet Corporation, and approximately nine other common carriers by water in the outbound Far East trade, entered into the Far East Conference Agreement, and said Far East Conference Agreement was duly approved by the United States Shipping Board on November 14, 1922. Said parties entered into the Far East Conference Agreement at the instance and request of the plaintiff acting by and through the United States Shipping Board.

[fol. 35] Twenty-third: The Far East Conference Agreement was entered into for the purpose of securing, and the performance of the parties to the Far East Conference Agreement has, with the exception hereinafter stated, secured, to the shippers and carriers in the outbound Far East trade and to the commerce of the United States gen-



erally, as hereinafter more fully alleged, the advantages and benefits for the securing and protection of which the Shipping Act, 1916, and particularly Section 15 of said statute and its provisions for the approval of Conference agreements, were enacted.

Twenty-fourth: Since the date of the approval of the Far East Conference Agreement, all of the original parties thereto, excepting Prince Line, Ltd. and Ellerman & Bucknall Steamship Co., Ltd., have ceased to be parties to the Far East Conference Agreement; but there have been added to the parties to said agreement more than twenty new parties, certain of which consist of numerous ship-owning companies which are themselves organized as joint services pursuant to joint service agreements which have been filed with, and approved by, the United States Maritime Commission.

Twentieth-fifth: Certain of such new parties, notably those of Japanese nationality, have ceased to be parties to the Far East Conference Agreement. As of the date of the commencement of this suit, there were twenty parties to the Far East Conference Agreement, including, for the purpose of such enumeration, collectively as a single party, the various companies which entered into each joint service agreement.

Twenty-sixth: In the entire period during which the Far East Conference Agreement has been in effect, the parties thereto have never denied participation in the Far East Conference Agreement and membership in the Far East Conference, to any common carrier by water which has applied for such participation and membership; and all such applications were granted and the applicants became parties to the Far East Conference Agreement and members of the Far East Conference.

Twenty-seventh: The United States Maritime Commission, exercising its jurisdiction under and pursuant to the United States Shipping Act, 1916, the Merchant Marine Act, 1920, and the Merchant Marine Act, 1936, has adopted, and in its adjudicated reports has announced, a policy whereby its approval of any conference agreement under Section 15 of the Shipping Act, 1916, will be withdrawn in [fol. 36] the event that the parties thereto shall exclude from full and equal participation therein, any common carrier by water who can give reasonable evidence of ability

and intention in good faith to inaugurate and/or maintain a regular and dependable service in the trade which is within the scope of such conference agreement. Upon such disapproval of such conference agreement by the United States Maritime Commission, such agreement would become unlawful and it would be unlawful for the parties thereto to act further thereunder.

Twenty-eighth: The only common carrier by water operating with reasonable regularity in the outbound Far East trade and who is not, and who, at the date of the commencement of this suit, was not, a party to the Far East Conference Agreement and who, on information and belief, is the common carrier referred to in the paragraph of the complaint numbered "29", has made no application for participation in the Far East Conference Agreement and membership in the Conference. Said common carrier is hereinafter for convenience referred to as the "Second Outside Line". The Member Lines and the other parties to the Far East Conference Agreement are ready, able and willing to admit the Second Outside Line, upon its making application therefor, to full and equal participation in the Far East Conference Agreement and full and equal membership in the Far East Conference.

Twenty-ninth: Upon information and belief, since the date of the approval of the Far East Conference Agreement, no person, firm or corporation has been deterred, hindered, precluded or prevented from engaging in the transportation of cargoes in the outbound Far East trade, as common carrier or otherwise, by the defendants or by the parties from time to time participants in the Far East Conference Agreement or by any acts or practices done or engaged in by them collectively or severally.

Thirtieth: In accordance with the purposes contemplated by the enactment of the Shipping Act, 1916, the Far East Conference Agreement and the performance of the parties thereto thereunder and in accordance with its terms, has, excepting during the periods hereinafter specified, resulted in the achievement of numerous advantages and benefits to the merchants, manufacturers and farmers of the United States, whose products are sold in the territories served by the parties to the Far East Conference Agreement, and [fol. 37] great benefits and advantages to the agriculture,

commerce and industry of the United States generally, including the following:

(a) The substantial increase in sailing opportunities in the outbound Far East trade.

(b) Fixed and dependable dates of sailings at regular intervals.

(c) Stability of freight rates over long periods of time, with the result, among many others, that the American exporter has been able to quote prices and/or make contracts for future delivery in competition with foreign merchants, without fear of instability or of violent fluctuation in freight rates.

(d) Uniform freight rates have been made available to all merchants, manufacturers, farmers, or other exporters, irrespective of size or economic power.

(e) The elimination of weaker steamship lines has been prevented.

(f) Freight rates from the United States Atlantic and Gulf ports to the markets in the Far East have been maintained in proper relationship to the freight rates from foreign countries to those markets.

(g) The types of ships engaged in the outbound Far East trade have been immeasurably improved as respects speed, carrying capacity, refrigerated space, tank facilities and other characteristics.

The foregoing benefits and advantages have resulted in the general enhancement of the prosperity and security of the United States and of all of the elements of the economy thereof.

Thirty-first: Promptly upon the approval of the Far East Conference Agreement, the benefits and advantages described in Paragraph Thirtieth of this answer began to be operative and came to be progressively enjoyed by American exporting interests until in or about the year 1928. As an aid to the securing of such benefits and advantages by the elimination of uneconomic and destructive rate competition between the parties to the Far East Conference Agreement and the parties to an agreement known as the Pacific Westbound Conference Agreement, being U. S. Maritime Commission Agreement No. 57, the parties to the two said Conference agreements entered into a joint agree-



ment dated March 2, 1925, which was duly approved by the [fol. 38] United States Shipping Board and which provided that the parties to the two said Conference agreements might; as in said agreement stipulated, work cooperatively in the fixing of rates for the carriage of cargoes from Pacific Coast ports, on the one hand, and Atlantic Coast ports and Gulf of Mexico ports; on the other hand; to the various ports in the Far East. Said agreement of March 2, 1925 contained, among others, a provision to the effect that neither conference, party thereto, could reduce freight rates until thirty days after notice of such decrease should be given to the other conference.

Thirty-second: In or about the year 1928, a corporation, hereinafter referred to as the "First Outside Line," initiated a steamship service as a common carrier by water in the outbound Far East trade. Upon information and belief, the management of said First Outside Line was the predecessor in business of the Second Outside Line. The First Outside Line conducted its services by use of vessels owned by two ship-owning companies. Since the outbreak of the Second World War, said ship-owning companies discontinued furnishing vessels to the First Outside Line and established a joint service in the outbound Far East trade under their own management, and are now parties to the Far East Conference Agreement and are among the defendants named herein. Upon information and belief, the management of the said First Outside Line thereupon, through another corporate form, acquired vessels of its own and became and now is the Second Outside Line. Upon information and belief, the principal officers and those in executive charge of the business of the Second Outside Line and of the First Outside Line are identical and the policies and methods of business and competition are similar and have, with interruption only by the Second World War, been continuous.

Thirty-third: In or about the year 1928, the First Outside Line began and thereafter continued to engage in the practices, among others, (a) of quoting and charging freight rates fractionally under the rates fixed and established by the parties to the Far East Conference Agreement, and (b) offering to freight brokers exorbitant brokerages for diverting the cargoes of their principals to the First Outside Line. The practices of the First Outside Line resulted in a demoralization of the traffic in the outbound Far East

trade to such an extent that the exporters from the United States in said trade were unable to know from day to day what freights they would be required to pay for the transportation of their cargoes in the outbound Far East trade. The parties for the time being to the Far East Conference [fol. 39] Agreement, as a means of eliminating said demoralization, invited and urged the First Outside Line to become a party to the Far East Conference Agreement; but the First Outside Line refused so to do unless, as a condition of its so doing, the Conference would agree that the First Outside Line might treat certain of its shippers preferentially. The parties for the time being to the Far East Conference Agreement refused to concede these illegal conditions.

Thirty-fourth: (a) That in or about the year 1929, in order to attempt a stabilization of the commerce between all United States ports and ports in the Far East, the parties for the time being to the Far East Conference Agreement and the parties to the Pacific Westbound Conference Agreement, acting under said joint agreement dated March 2, 1925, and not otherwise, established with respect to certain commodities two levels of rates, the lower of which was made available to all shippers who entered into an agreement with the parties to the said two Conference agreements, to ship their commodities by vessels of said parties. Similar agreements were entered into in the year 1930, with respect to a somewhat larger group of commodities.

(b) The establishment of said rates and the entry into said agreements proved incapable of eliminating said demoralization; and, in the premises, the parties for the time being to the Far East Conference Agreement determined that the competitive methods pursued by the First Outside Line required that said parties should be able to reduce the rates within the scope of their conference agreement more speedily than was possible, because of said provision for thirty days' notice, so long as said agreement dated March 2, 1925 continued in effect. Accordingly, in September 1930, the parties for the time being to the Far East Conference Agreement took measures to terminate said agreement dated March 2, 1925, and said agreement was thereupon so terminated.

(c) In or about February 1931, the said competition became so disruptive that nine of the eleven members of the Far East Conference gave notice under the Far East Con-

ference Agreement of their withdrawal therefrom, to take effect on May 6, 1931, and said Far East Conference was threatened with extinction. Prior to the latter date, however, five of the nine members who had given such notice retracted the notices so given by them and in the following September, three of the remaining four members rejoined the Conference in an effort to restore stability.

[fol 40] Thirty-fifth: Thereupon and in the years 1931, 1932, 1933 and 1934, the parties for the time being to the Far East Conference Agreement, acting pursuant to the Far East Conference Agreement and not otherwise, but without cooperation with the parties to any other conference agreement, established two levels of rates, known as contract and non-contract rates, with respect to certain commodities and made the lower or contract rates available to all shippers of such commodities who would enter into the forms of agreement adopted in said respective years, providing in substance that the shippers of such commodities would ship the same to ports in the Far East exclusively by the vessels owned and/or operated by the parties to the Far East Conference Agreement.

Thirty-sixth: Notwithstanding the measures taken as aforesaid, the conditions prevailing in the commerce in the outbound Far East trade had, due to the competitive methods of the First Outside Line, deteriorated to such an extent by March 1934, that the Department of Commerce, Shipping Board Bureau, which then exercised the jurisdiction now vested in the United States Maritime Commission, on its own motion, instituted an investigation pursuant to the provisions of Section 19 of the Merchant Marine Act, 1920, to determine what rules and regulations it might promulgate to correct or to alleviate the disruptive conditions brought about as aforesaid. As the result of the said investigation, the said Shipping Board Bureau promulgated its report in a proceeding known as "Docket 128—Investigation—Section 19 of the Merchant Marine Act, 1920", which is reported at 1 U. S. Maritime Commission 470. In said report, the said Shipping Board Bureau fully described and thereupon condemned the said disruptive competitive methods of the First Outside Line and the effects thereof on the commerce of the United States. The defendants respectfully ask leave to, and do hereby, incorporate herein by reference the aforesaid report of the said Shipping Board Bureau.



Thirty-seventh: As the result of said investigation, the said Shipping Board Bureau determined that its powers in the premises were limited to the issuance of an order, which it thereupon issued, requiring common carriers in outbound trades from United States ports, to file with it, within thirty days after adoption, copies of their tariffs and modifications thereof.

Thirty-eighth: Inasmuch as such filing was not required to be made until thirty days after the adoption of the respective rates, the said order resulting from said investigation, although affording some relief, was not "adequate [fol. 41] to remedy the conditions which afflicted the commerce of the United States as aforesaid.

Thirty-ninth: Under the circumstances aforesaid, and acting pursuant to the Far East Conference Agreement and not otherwise, (a) the parties to the Far East Conference Agreement, in the years 1935 and 1936, continued the establishment of tariffs with respect to an increasing number of the commodities moving in the Far East trade at two levels of rates—contract rates and non-contract rates—of which the contract rates were lower, and made said contract rates available to all shippers of the commodities with respect to which contract rates were established, who should enter into an agreement with the parties for the time being to the Far East Conference Agreement, to the effect that such contracting shippers would ship all of their said commodities destined for ports in the Far East by vessels owned and/or operated by the parties for the time being to the Far East Conference Agreement; (b) in or about the year 1937, changed the form of said contract with said shippers so that the same became in substance the Far East Freight Agreement which, with various changes and amendments, resulted in the form attached to the complaint and marked Exhibit B; and (c) in or about the month of March, 1936, and continuously thereafter, made note of the application of the said contract and non-contract rates in their Conference tariffs and duly filed successively with the United States Shipping Board Bureau of the Department of Commerce and with the United States Maritime Commission, said tariffs, said successive forms of the Far East Freight Agreement, and minutes of all Conference meetings at which such tariffs and/or agreement forms were adopted or amended. The form of Far

East Freight Agreement which was in effect prior to the outbreak of the Second World War, provided that the rates of freight could be increased only after ninety days' notice to the shipper, and that the agreement could be cancelled only on ninety-days' notice. In September 1939, at the outbreak of said War, and due to the conditions incident to the War and the measures taken by the various governments in connection therewith, the said ninety day periods were respectively shortened to thirty days. The present parties to the Far East Conference Agreement have duly taken action to amend the outstanding Far East Freight Agreements, effective December 1, 1948, and to change the form thereof with respect to shippers who shall enter thereinto subsequent to December 1, 1948, so that the same shall be in accordance with the form hereto attached, marked Exhibit 1, and made a part of this answer.

[fol. 42] Fortieth: The parties to the Far East Conference Agreement enter into Far East Freight Agreements with, and make contract rates available to, all shippers in the outbound Far East trade who desire to enter into such agreements without preference or discrimination; and at all of the times mentioned in the paragraphs hereof numbered Thirty-fourth (a), Thirty-fifth and Thirty-ninth, have entered into the agreements therein referred to with, and made the contract rates available to, all shippers in the outbound Far East trade without preference or discrimination.

Forty-first: Notwithstanding the beneficial effects of the order entered by the United States Shipping Board Bureau of the Department of Commerce in Docket 128, as aforesaid, and notwithstanding the action taken by the parties from time to time to the Far East Conference Agreement, as aforesaid, with respect to the establishment of contract and non-contract rates, conditions of stability had not returned in the Far East trade at the time of the outbreak of said War in 1939. As shippers and exporters generally came to appreciate the disruptive effect upon their affairs of the continuance of the conditions aforesaid, they, in increasing numbers, became parties to Far East Freight Agreements, with the result that, since the cessation of hostilities, the major portion of the export commerce of the United States in the outbound Far East trade, is transported under and pursuant to Far East Freight Agreements.

Forty-second: As a result of the adoption of the Far East Freight Agreement and the application thereunder of said contract rates, the Far East Conference has, since the termination of hostilities, again been able to establish conditions substantially as they existed prior to 1928 in the outbound Far East trade, and to extend to the merchants, farmers and manufacturers of the United States the advantages arising from conference action, including those enumerated in the paragraph hereof numbered Thirtieth.

Forty-third: The United States Maritime Commission and its predecessors in authority have repeatedly upheld the establishment of contract and non-contract rates and the use in connection therewith of agreements of the character represented by Exhibit B annexed to the complaint, and more particularly of a character represented by Exhibit 1 hereto attached as constituting a proper practice by conferences acting pursuant to agreements approved under Section 15 of the Shipping Act, 1916, so long as said respective conferences should permit full and equal participation therein by all common carriers in the respective trades who [fol. 43] should give evidence of ability and intention in good faith to establish and/or maintain a regular and dependable service in the respective trades. Such rulings on the part of the said Maritime Commission and its said predecessors are to be found, among others, in the following of their official reports:

Docket No. 80—*The W. T. Rawleigh Co. v. M. V. Stoomvaart Mij "Nederland", et al.*, 4 U. S. S. B. 285 (1933);

Docket No. 648—*Pacific Coast/European Conference Agreement*, 3 U. S. M. C. 11 (1948);

Docket No. 423—*Phelps Bros. & Co., Inc. v. Cosulich-Societa, etc.*, 1 U. S. M. C. 634 (1937);

Docket No. 515—*Sprague Steamship Agency, Inc. v. A/S Ivarans Rederi, et al.*, 2 U. S. M. C. 72 (1939).

Forty-fourth: Pursuant to said rulings of the United States Maritime Commission, conferences in many of the most important trades have adopted such rates and similar contracts; and the welfare and stability of an important part of the commerce of the United States is dependent upon the continuance thereof.

Forty-fifth: It would be economically impossible for the



defendants to continue to afford to the merchants, farmers and manufacturers who ship their merchandise in the outbound Far East trade, the advantages of conference operation, including those enumerated in Paragraph Thirtieth, without tariffs of the type adopted by the Far East Conference as aforesaid and without said Far East Freight Agreement. The defendants have invested, and if their frequent service with speedy and especially adapted vessels is to be maintained, must continue to invest, large sums of money, in the construction of progressively more modern vessels. Such investment would be discouraged or halted unless the steamship owners are assured of the regular patronage of a considerable body of shippers at compensatory rates of freight. Although the shippers in every industry benefit when all of them are charged fair and reasonable rates of freight with stability maintained over long periods of time, nonetheless, the individual shipper, when offered an opportunity to ship at fractionally lower rates, tends to seek this advantage over his competitors, and these competitors are thereby of necessity compelled, likewise, to seek similarly lowered shipping charges. As a consequence, unless such contract and non-contract tariffs are maintained, disruptive conditions such as those described in said Docket [fol. 44] 128—Investigation—Section 19 Merchant Marine Act, 1920 will prevail, with the result that (a) the weaker steamship lines who are unable to endure cutthroat competition will be eliminated, and (b) the remaining conference members, faced by a reduction of their revenues to the point where they cease to provide compensation for the regular and speedy services which had theretofore been maintained, will be forced to choose between abandoning their services in the trade altogether and conducting them with little or no regularity and with inferior tonnage, so that the service rendered will be commensurate with the compensation received.

Forty-sixth: The exporters of agricultural and industrial products from British and European ports to the Far East market enjoy all of the benefits arising from ocean freight rates fixed by conference action, including those enumerated in Paragraph Thirtieth, for the reason, among others, that the laws of Great Britain and of the continental European countries permit the conferences to avail themselves not alone of the practice of adopting contract and non-contract rates, the former of which are available to shippers

who enter into contracts of a purport generally similar to Exhibit B annexed to the complaint, but also permit the parties to conference agreements to adopt other methods of avoiding destructive and disruptive competition which have been rendered illegal by the Shipping Act, 1916, as amended. Unless the defendants are permitted to continue the practice of adopting contract and non-contract rates, accompanied by agreements such as Exhibit B annexed to the complaint or Exhibit 1 hereto annexed, the shippers of the products of American factories and farms, being deprived of said advantages, will be unable to compete with the exporters of such products from Great Britain and Europe and will be unable to compete fairly among themselves because of the inevitable discrimination and fluctuations in freight rates which would result.

Forty-seventh: At all times since the establishment of the tariffs of rates as aforesaid and the adoption of said Far East Freight Agreement, the rates of freight from time to time established by the parties to the Far East Conference Agreement have been fair and reasonable and have been applied without preference or discrimination.

Forty-eighth: By reason of the premises, (a) to the extent, if any, that the acts of the defendants alleged in the complaint have effected any restraint of the foreign trade and commerce of the United States, said restraint has [fol. 45] been fair and reasonable and necessary in the interests of American industry, commerce and agriculture and of the common carriers in the outward Far East trade; and (b) all of the acts of the defendants alleged in the complaint have been done and performed under and pursuant to an agreement duly filed and duly approved in accordance with the provisions of Section 15 of the Shipping Act, 1916, as amended, and are accordingly excepted from the provisions of Sections 1 and 2 of the Act of July 2, 1890, as amended, known as the Sherman Antitrust Act.

As a second separate and complete defense, the defendants answering hereby allege:

Forty-ninth: Heretofore and prior to January 12, 1948, a number of common carriers by water in the trade between United States Pacific Coast ports and European ports, filed with the United States Maritime Commission for approval pursuant to the provisions of Section 15 of the Shipping Act, 1916, as amended, an agreement known as

the Pacific Coast/European Conference Agreement, being Agreement Nos. 5200 and 5200-2.

Fiftieth: The United States Maritime Commission duly instituted an investigation upon its own motion to determine whether the said agreements should be approved or disapproved.

Fifty-first: Upon information and belief, the Antitrust Division of the United States Department of Justice intervened in said proceeding and challenged the legality of the practice of the Pacific Coast/European Conference in charging for transportation at two levels of rates and of obtaining from their shippers contracts of the general character of that represented by Exhibit B attached to the complaint, on the ground that these practices are monopolistic, result in different rates for identical services, and because the contract with the shipper is not subject to approval under Section 15 of the Shipping Act, 1916, and therefore is not subject to exemption from the Antitrust Act and for other reasons.

Fifty-second: Upon information and belief, the United States Maritime Commission, subject to an amendment of the form of freight contract to be tendered to shippers, overruled the objection of the Antitrust Division of the Department of Justice on the ground that the members of the Conference had at no time denied membership to any [fol. 46] applicant carrier, and that the contract rate system is a necessary practice in the trade to secure the continuance of the Conference; the frequency, dependability and stability of service; and the uniformity and stability of freight rates.

Fifty-third: Upon information and belief, said Antitrust Division of the United States Department of Justice has taken no action to obtain judicial review of the aforesaid determination of the United States Maritime Commission.

As a third separate and complete defense, the defendants answering hereby allege:

Fifty-fourth: The complaint fails to state a claim against the defendants upon which relief can be granted.

As a fourth separate and complete defense, the defendants answering hereby allege:

Fifty-fifth: This Court lacks jurisdiction over the subject matter of this action (a) because agreements between



common carriers by water in foreign commerce in respect of competition and cooperative arrangements and the fixing of rates and the establishment of tariffs and of the rules and regulations relative to the application thereof, are within the exclusive jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended, (b) because the alleged acts of the defendants as set forth in the complaint are claimed to have occurred in respect of matters subject to the exclusive jurisdiction, supervision and regulation of the United States Maritime Commission which is authorized by law to afford a complete remedy by means of investigation, decision and appropriate order, (c) because the plaintiff has no right to apply to this Court for injunctive relief in advance of investigation, decision and order by the United States Maritime Commission with respect to the matters alleged in the complaint, or in advance of any violation by the defendants of such order as the United States Maritime Commission might make pursuant to such investigation, and (d) because a judicial remedy does not lie in such case until the administrative remedy before the United States Maritime Commission shall have been finally and completely exhausted.

[fol. 47] As a fifth separate and complete defense, defendants answering hereby allege:

Fifty-sixth: The plaintiff has a full, adequate and complete remedy at law before the United States Maritime Commission.

WHEREFORE, the defendants pray judgment that the complaint herein be dismissed.

Dated: Jersey City, N. J., October 1, 1948.

Milton, McNulty & Angelli, by John Milton, Member of the Firm: Solicitors for Defendants, Far East Conference, United States Lines Company, States Marine Corporation, M. V. Nonsuco Inc., Lancashire Shipping Co., Ltd., Skibsaktieselskapet Igadi, A. F. Klaveness & Co. A/S, The De La Rama Steamship Co., Inc., Waterman Steamship Corporation, Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co., Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskapet

Ivarans Rederi, Ellerman & Bucknall Steamship Co., Ltd., Fearnley & Eger, Wilhelmsens Dampskibsaktieselskab, Dampskibsselskabet af 1912 A/S, The Bank Line, Ltd., The China Mutual Steam Navigation Co., Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco and A/S Dampskibsselskabet Svendborg, Office & P. O. Address, 1 Exchange Place, Jersey City, N.-J.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 48]

EXHIBIT 1 TO ANSWER

Far East Freight Agreement.

Contract No.

Memorandum of Agreement, made the ..... day of ..... , 19 .. , by and between ..... hereinafter called the Shipper, and Members of Far East Conference, designated below and hereinafter called the Carriers, it being understood and agreed to by the Shipper and by the Carriers that if the Far East Conference add any additional line or lines to their membership, such line or lines shall thereby become party to this Agreement, and the Shipper shall have the right to request shipping space of such line or lines as in this Agreement provided; and should any line or lines cease to be members of said Conference all future rights under this Agreement of such line or lines, and of the Shipper as to any such line or lines, shall thereupon terminate.

1. The Shipper, in consideration of the rates and other conditions stated herein agrees to forward by vessels of the Carriers all shipments made, directly or indirectly, by him, his agents, subsidiary, associated and/or parent companies and shipped from United States ports, excepting, however, Pacific Coast ports, to ports in Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China and Philippine Islands.

The commodities involved, the estimated quantities, and the rates and conditions to govern are shown on the attached supplement or supplements. It is mutually understood and agreed that if Shipper should subsequently forward any commodity other than those shown on attached supplement or supplements, said shipments are considered

to be part of this Agreement, and therefore entitled to the lowest rate then in effect on such commodity without requiring Shipper to conclude a supplemental agreement with the Carriers.

2. The rates of freight named or provided for hereunder are subject to being increased reasonably from time to time by the Carriers giving the Shipper written notice thereof not less than ninety (90) days in advance of the increase. Increases shall be deemed accepted by the Shipper unless he notifies the Carriers to the contrary within thirty (30) days from the receipt of said notice. Within said thirty days, the Shipper may give the Carriers written notice of cancellation of this contract as of the effective date of the increased rate or rates, subject, nevertheless, to the option on the part of the Carriers, declarable not less than thirty (30) days prior to the effective date of the increase in rate [fol. 49] or rates, either to accept the cancellation, or to continue this contract in force under the rates in effect at the date when the notice of increase shall have been given. Recognizing that it will be impracticable for the Carriers to give notices of increases of all rates to all contracting shippers, it is agreed that the Carriers shall furnish to the Shipper notices of all increases in rates applicable only to the commodity or commodities specified in the attached supplement or supplements and such additional commodity or commodities as to which the Shipper shall have given written notice to the Chairman of the Far East Conference of his intention to ship.

Should the Carriers, during the term of this Agreement reduce rates on any commodities which are covered by the attached supplement or supplements, or which are mentioned in any notice given by the Shipper to the Carriers as aforesaid, the Shipper shall be given the full benefit of such reduced rates during the period the same remain in effect; provided, however, that nothing herein contained is intended to preclude the Carriers from furnishing transportation for goods not intended for commercial or industrial use, shipped by governments, governmental agencies or public or private, national or international, charitable, eleemosynary or humanitarian agencies, or religious or missionary societies, at rates lower than the rates herein provided for; and if the Carriers do so carry at such lower rates, the Shipper shall have no right hereunder to require



the Carriers to transport for the Shipper at such lower rates.

3. The Carriers undertake, throughout the period of this Agreement, to maintain a steamship service which shall, so far as concerns the frequency of sailings and the carrying capacity of their vessels, be adequate to meet all of the reasonable requirements of the commerce of the United States moving in the trades specified in Paragraph 1 hereof; and the Carriers further agree that, subject to the availability of unbooked space in the vessels of the Carriers at the time when the Shipper applies therefor, the vessels of the Carriers shall, subject to the provisions of Paragraph 5 hereof, transport the cargoes of the Shipper in the aforesaid trade, upon the terms and conditions herein set forth.

The Shipper shall have the option of selecting any of the vessels operated by any of the respective Carriers who at time of shipment are Members of the Far East Conference, provided that the required space to port of destination is available in the vessels selected either direct or with transshipment at the time when the Shipper makes application therefor. The Shipper shall be required to reach agreement [fol. 50] with the respective Carriers as to the quantity to be shipped per vessel, port or ports of loading, port or ports of discharge, and to apply for freight space as long prior to the vessel's advertised sailing date is practicable. If the Carriers do not furnish space after the Shipper duly applies therefor, the Shipper shall be free, with respect to such shipment, to secure space elsewhere without prejudice to his right to future shipments under this Agreement, provided that the Shipper first notifies the Chairman of the Far East Conference at New York and allows the Chairman forty-eight (48) hours from the receipt of such notice to confirm that such space is not available.

4. If, at any time, the Shipper shall make any shipment or shipments in violation of any provision of this Agreement, the Shipper shall pay liquidated damages to the Conference in lieu of actual damages which would be difficult or impracticable to determine. Such liquidated damages shall be paid in the amount of freight which the Shipper would have paid had such shipment or shipments moved via a Conference Carrier computed at the contract rate or rates currently in effect. Failure of the Shipper to pay liquidated damages within thirty (30) days after the receipt

of notice from the Conference that such liquidated damages are due and payable shall be cause for the Conference to terminate the Shipper's right to the contract rates until the Shipper pays to the Conference the amount due. In the event the Shipper violates this contract more than once in any period of twelve months, the Conference may cancel this contract by serving written notice of such cancellation upon the Shipper and notifying the Maritime Commission of such action. If the Contract is cancelled for violation thereof as provided herein, the Conference may refuse to enter into a new contract with the Shipper until any unpaid liquidated damages due to the Conference have been paid in full.

In order that the Conference may determine the existence or non-existence of a violation hereof, the Shipper shall, upon request, furnish to the Conference full and complete information with respect to any shipment or shipments made by such Shipper in the trade covered by this Agreement.

5. Shipments under this Agreement are subject to all the terms and conditions contained in the respective Carrier's engagement note, permit, dock receipt and/or regular form of bill of lading, in use by the Carrier when shipments are tendered.

6. In the event of any hostilities breaking out or threatening to break out, in which the United States and/or Great Britain and/or Japan and/or China and/or Indo-China and/or Russia and/or their Colonies are involved, or by [fol. 51] which the Carriers' interests are affected, the Carriers have the option of cancelling this Agreement.

7. In compliance with Section 16 of the "Shipping Act, 1916," payment by the Carriers and the acceptance of freight brokerage by the broker is with the strict understanding that no part of the brokerage thus collected shall revert to the Shipper, or to the consignee, and that the business of the broker is in no sense subsidiary to or affiliated with that of the Shipper or of the Consignee.

8. Any disputes between the parties hereto arising out of this Agreement or involving the interpretation or effect thereof, shall be referred to a board of three arbitrators, one of whom shall be appointed by the Shipper, the second of whom shall be appointed by the Carriers, and the third of whom shall be appointed by the two arbitrators ap-

pointed as aforesaid. The decision of any two of said arbitrators with respect to any matter submitted to them as aforesaid, including, but without limitation, the amount of damages arising from any breach of this Agreement, shall be final and binding upon the Shipper and the Carriers and, for the purpose of enforcing any such award, the same shall be made a rule of the Court.

9. This Agreement, subject to the conditions set forth herein, may be terminated upon ninety (90) days written notice by the Shipper, or by all of the Carriers, or by any one or more of the Carriers (in which case such cancellation shall be effective only as to the notifying Carriers). If this Contract shall be terminated as to some, but not all, Carriers, the Shipper shall be at liberty to ship by such terminating Carriers so long as such terminating Carrier or Carriers remain members of the Far East Conference without thereby violating this Contract.

10. In the event of threat, existence or continuance of any present or future war or war-like conditions or hostilities or civil commotion, or measures taken by any Government in consequence thereof or in connection therewith, or the existence or continuance of conditions which, in the opinion of any one or more of the Carriers, indicates that there is a danger of any of the foregoing, which may impede, obstruct or delay, or render impossible or hazardous performance of its or their obligations due to the requisition, seizure or loss of any of the vessels of any one or more of the Carriers, or any other cause whatsoever whether similar or dissimilar, or which, in the sole judgment of any one or more of the Carriers, may directly or indirectly result in the imposition upon it or them of any undue financial or other hardship or burden in the performance of its or their [fol. 52] obligations, any one or more of the Carriers shall have the option of forthwith cancelling this Agreement as to it or them. If this Agreement shall be cancelled as to some but not all of the Carriers the Shipper shall be at liberty to ship by such cancelling Carrier or Carriers so long as such cancelling Carrier or Carriers remain members of the Far East Conference without thereby violating this Agreement.

11. It is agreed that the party herein referred to as the Shipper is not the agent or broker for any principal,



whether disclosed or undisclosed, and that no party who is not named herein or at the foot hereof shall have any rights as Shipper by virtue hereof.

**List of Carriers:**

(Shipper)

By

Title

(Address of Shipper)

Subsidiary, Associated and/or  
Parent Companies:

For and on Behalf of Members of  
Far East Conference:

By

Chairman

11 Broadway, New York 4, N. Y.

(Address of Shipper must be Shown on Contract)

[fol. 53] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

ANSWER—Filed October 4, 1948

Defendant Isthmian Steamship Company, a corporation organized and existing under the laws of the State of Delaware, answering the complaint herein, alleges:

First: Denies that the facts alleged in the complaint constitute a basis upon which the jurisdiction of this Court may be invoked under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended, commonly known as the Sherman Antitrust Act, or constitute violations by the defendants, jointly or severally, of Sections 1 and 2 of said Act; and except to the extent in this Paragraph First specifically denied, denies each and every allegation contained in the paragraph of the complaint numbered "1".

Second: Admits that the defendant, United States Lines Company, was organized and exists under the laws of the [fol. 54] State of New Jersey, within the District of New Jersey, and has a place of business in said district and transacts business therein; and except as in this Paragraph Second specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "2".

Third: Admits that defendant, Far East Conference, has its office and principal place of business at 11 Broadway, New York, New York; and except as in this Paragraph Third specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "3".

Fourth: Admits that defendant, The Bank Line, Ltd., is a corporation organized and existing under the laws of Scotland and that it is represented by an agent who maintains an office for the transaction of business at 24 State Street, New York, New York; and except as in this Paragraph Fourth specifically admitted, denies each and every allega-

tion set forth and contained in the paragraph of the complaint numbered "5".

Fifth: Admits that defendant, The China Mutual Steam Navigation Co. Ltd. is a corporation organized and existing under the laws of England and that it is represented by an agent who maintains an office for the transaction of business at 25 Broadway, New York, New York; and except as in this Paragraph Fifth specifically admitted, denies each and every allegation contained in the paragraph of the complaint numbered "6".

[fol. 55] Sixth: Admits that defendants, Dampskibsselskabet af 1912 A/S and A/S Dampskibsselskabet Svendborg, are corporations organized and existing under the laws of Denmark and that they are represented by an agent who maintains an office for the transaction of business at 30 Broad Street, New York, New York; and except as in this Paragraph Sixth specifically admitted, denies each and every allegation contained in the paragraphs of the complaint numbered "7" and "8".

Seventh: Admits that defendant, The De La Rama Steamship Co., Inc., is a corporation organized and existing under the laws of the Philippines and has an office at 90 Broad Street, New York; and except as in this Paragraph Seventh specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "9".

Eighth: Admits that defendant, Ellermann & Bucknall Steamship Co., Ltd. is a corporation organized and existing under the laws of Great Britain and that it is represented by an agent who maintains an office for the transaction of business at 26 Beaver Street, New York, New York; and except as in this Paragraph Eighth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "10".

Ninth: Denies each and every allegation set forth and contained in the paragraph of the complaint numbered "11".

Tenth: Admits that defendant, A. F. Klaveness & Co. A/S, is a corporation organized and existing under the laws [fol. 56] of Norway and that it is represented by an agent who has an office for the transaction of business at 310 Sansome Street, San Francisco, California; and except as in this Paragraph Tenth specifically admitted, denies each and



every allegation set forth and contained in the paragraph of the complaint numbered "12".

Eleventh: Admits that it is a corporation organized and existing under the laws of the State of Delaware and maintains an office for the transaction of business at 71 Broadway, New York, New York. Except as above admitted, it denies Paragraph "13".

Twelfth: Admits that defendants, Skibsaktieselskabet, Igadi, A/S Besco and Aktieselskapet Ivarans Rederi, are corporations organized under the laws of Norway and that they are represented by an agent who maintains an office for the transaction of business at 17 Battery Place, New York, New York; and except as in this Paragraph Twelfth specifically admitted, denies each and every allegation set forth and contained in the paragraphs of the complaint numbered "14", "15" and "16".

Thirteenth: Admits that defendant, Lancashire Shipping Co. Ltd., is a corporation organized and existing under the laws of the United Kingdom and that it is represented by an agent who maintains an office for the transaction of business at 52 Broadway, New York, New York; and except as in this Paragraph Thirteenth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "17".

[fol. 57] Fourteenth: Admits that defendant, Nederlandsche Stoomvaart Maatschappij "Oceaan" N.V. is a corporation organized and existing under the laws of Holland, and that defendant, the Ocean Steamship Company, Ltd., is a corporation organized and existing under the laws of Great Britain, and that both said corporations are represented by an agent who maintains an office for the transaction of business at 25 Broadway, New York, New York; and except as in this Paragraph Fourteenth specifically admitted, denies each and every allegation set forth and contained in the paragraphs of the complaint numbered "19" and "21".

Fifteenth: Admits that defendant, M. V. Nonsuco, Inc., is a corporation organized and existing under the laws of the Philippines and that it is represented by an agent who maintains an office for the transaction of business at 19 Rector Street, New York, New York; and except as in this Paragraph Fifteenth specifically admitted, denies each and

every allegation set forth and contained in the paragraph of the complaint numbered "20".

Sixteenth: Admits that defendant, Prince Line, Ltd., is a corporation organized and existing under the laws of England and that it is represented by an agent who maintains an office for the transaction of business at 34 Whitehall Street, New York, New York; and except as in this Paragraph Sixteenth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "22".

[fol. 58] Seventeenth: Admits that defendant, Silver Line, Ltd., is a corporation organized and existing under the laws of England and that it is represented by an agent who maintains an office for the transaction of business at 17 Battery Place, New York, New York; and except as in this Paragraph Seventeenth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "23".

Eighteenth: Admits that defendant, Swedish East Asiatic Co., Ltd. is a corporation organized and existing under the laws of Sweden and that it is represented by an agent who maintains an office for the transaction of business at 90 Broad Street, New York, New York; and except as in this Paragraph Eighteenth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "25".

Nineteenth: Admits that defendant, Wilhelmsens Dampskibsselskab, is a corporation organized and existing under the laws of Norway, and that it is represented by an agent who maintains an office for the transaction of business at 17 Battery Place, New York, New York; and except as in this Paragraph Nineteenth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "28".

Twentieth: Admits that defendants, United States Lines Company, States Marine Corporation, Lancashire Shipping Co. Ltd., Skibsaktieselskapet Igadi, The De La Rama Steamship Co., Inc., Waterman Steamship Corporation, [fol. 59] Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co.,

Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskabet Ivarans Rederi, Isthmian Steamship Company, Ellerman & Bucknall Steamship Co., Ltd., Wilhelmsens Dampskibsaktieselskab, Dampskibsselskabet Af 1912 A/S, The Bank Line, Ltd., The China Mutual Steam Navigation Co. Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco and A/S Dampskibsselskabet Svendborg, who are hereinafter for convenience collectively referred to as "The Member Lines", are engaged as common carriers by water in the transportation of property in foreign trades from Atlantic Coast and Gulf ports of the United States to ports of Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China, and the Philippine Islands, which trades are referred to in the complaint herein and sometimes in this answer as the "outbound Far East trade"; that The Member Lines, together with persons who are not parties to this action, are presently parties to an agreement known as United States Maritime Commission Conference Agreement No. 17, approved November 14, 1922 under the provisions of Section 15 of the Shipping Act, 1916, as amended, which, as originally executed and from time to time amended and supplemented, will hereinafter for brevity be referred to as the "Far East Conference Agreement", and a substantially true copy of which, as amended to December 4, 1947, is attached to the complaint herein as Exhibit A; that the parties to the Far East Conference Agreement, as aforesaid, at the time of the commencement of this suit, included all but one of the common carriers engaged with reasonable regularity in the transportation of property in the outbound Far East trade, and carry the major portion of all commercial cargoes transported in that trade; and except as in this Paragraph Twentieth specifically admitted, denies each and every allegation set forth and contained in the paragraph of the complaint numbered "29". The defendant reserves the right to offer in evidence upon the trial of this suit a true and accurate copy of the Far East Conference Agreement and all amendments thereof.

Twenty-first: Denies each and every allegation set forth and contained in the paragraph of the complaint numbered "31".

Twenty-second: Admits that the parties to the Far East Conference Agreement, acting under and pursuant to that agreement, have included in their tariffs with respect to



most commodities, both contract rates and non-contract rates; that contract rates are lower than non-contract rates; that the contract rates are available to all shippers who will enter into an agreement with the parties to the Far East Conference Agreement which, as the same has been from time to time and will hereafter be amended, is hereinafter referred to as the Far East Freight Agreement; and that Exhibit B attached to the complaint, is a substantially accurate copy of the form of the Far East Freight Agreement, revised as of August 15, 1945; and except as in this Paragraph Twenty-second specifically admitted, denies each and every allegation set forth and contained in the paragraphs of the complaint numbered "32", "33", "34", "35" and "36". The defendant reserves the right to offer in evidence upon the trial of this action a true and accurate copy of the Far East Freight Agreement as the same has been from time to time amended.

As and for a First Separate and Complete Defense, this Defendant Alleges:

Twenty-third: Heretofore and on or about September 1, 1922, the defendants Prince Line, Ltd. and Ellerman & Bucknall Steamship Co., Ltd. together with the United States Shipping Board, Merchant Fleet Corporation, and approximately nine other common carriers by water, in the outbound Far East trade, entered into the Far East Conference Agreement, and said Far East Conference Agreement was duly approved by the United States Shipping Board on November 14, 1922. Said parties entered into the Far East Conference Agreement at the instance and request of the plaintiff acting by and through the United States Shipping Board.

Twenty-fourth: The Far East Conference Agreement was entered into for the purpose of securing, and the performance of the parties to the Far East Conference Agreement has, with the exception hereinafter stated, secured, to the shippers and carriers in the outbound Far East trade and to the commerce of the United States generally, as hereinafter more fully alleged, the advantages and benefits for the securing and protection of which the Shipping [fol. 62] Act, 1916, and particularly Section 15 of said statute and its provisions for the approval of Conference agreements, were enacted.

Twenty-fifth: Since the date of the approval of the Far East Conference Agreement, all of the original parties thereto, excepting Prince Line, Ltd. and Ellerman & Bucknall Steamship Co., Ltd., have ceased to be parties to the Far East Conference Agreement; but there have been added to the parties to said agreement more than twenty new parties, certain of which consist of numerous ship-owning companies which are themselves organized as joint services pursuant to joint service agreements which have been filed with, and approved by, the United States Maritime Commission.

Twenty-sixth: Certain of such new parties, notably those of Japanese nationality, have ceased to be parties to the Far East Conference Agreement. As of the date of the commencement of this suit, there were twenty parties to the Far East Conference Agreement, including, for the purpose of such enumeration, collectively as a single party, the various companies which entered into each joint service agreement.

Twenty-seventh: In the entire period during which the Far East Conference Agreement has been in effect, the parties thereto have never denied participation in the Far East Conference Agreement and membership in the Far East Conference, to any common carrier by water which has applied for such participation and membership; and all such applications were granted and the applicants became parties to the Far East Conference Agreement and [fol. 63] members of the Far East Conference.

Twenty-eighth: The United States Maritime Commission, exercising its jurisdiction under and pursuant to the United States Shipping Act, 1916, the Merchant Marine Act, 1920 and the Merchant Marine Act, 1936, has adopted, and in its adjudicated reports has announced, a policy whereby its approval of any conference agreement under Section 15 of the Shipping Act, 1916, will be withdrawn in the event that the parties thereto shall exclude from full and equal participation therein, any common carrier by water who can give reasonable evidence of ability and intention in good faith to inaugurate and/or maintain a regular and dependable service in the trade which is within the scope of such conference agreement. Upon such disapproval of such conference agreement by the United States Maritime Commission, such agreement would become un-

lawful and it would be unlawful for the parties thereto to act further thereunder.

Twenty-ninth: The only common carrier by water operating with reasonable regularity in the outbound Far East trade and who is not, and who, at the date of the commencement of this suit, was not, a party to the Far East Conference Agreement and who, on information and belief, is the common carrier referred to in the paragraph of the complaint numbered "29", has made no application for participation in the Far East Conference Agreement and membership in the Conference. Said common carrier is hereinafter for convenience referred to as the "Second Outside Line". The Member Lines and the other parties [fol. 64] to the Far East Conference Agreement are ready, able and willing to admit the Second Outside Line upon its making application therefor to full and equal participation in the Far East Conference Agreement and full and equal membership in the Far East Conference.

Thirtieth: Upon information and belief, since the date of the approval of the Far East Conference Agreement, no person, firm or corporation has been deterred, hindered, precluded or prevented from engaging in the transportation of cargoes in the outbound Far East trade, as common carrier or otherwise, by the defendants or by the parties from time to time participants in the Far East Conference Agreement or by any acts or practices done or engaged in by them collectively or severally.

Thirty-first: In accordance with the purposes contemplated by the enactment of the Shipping Act, 1916, the Far East Conference Agreement and the performance of the parties thereto thereunder and in accordance with its terms, has, excepting during the periods hereinafter specified, resulted in the achievement of numerous advantages and benefits to the merchants, manufacturers and farmers of the United States, whose products are sold in the territories served by the parties to the Far East Conference Agreement, and great benefits and advantages to the agriculture, commerce and industry of the United States generally, including the following:

(a) The substantial increase in sailing opportunities in the outbound Far East trade.

(b) Fixed and dependable dates of sailings at regular intervals.



(c) Stability of freight rates over long periods of time, with the result, among many others, that the [fol. 65] American exporter has been able to quote prices and/or make contracts for future delivery in competition with foreign merchants, without fear of instability or of violent fluctuation in freight rates.

(d) Uniform freight rates have been made available to all merchants, manufacturers, farmers, or other exporters, irrespective of size or economic power.

(e) The elimination of weaker steamship lines has been prevented.

(f) Freight rates from the United States Atlantic and Gulf ports to the markets in the Far East have been maintained in proper relationship to the freight rates from foreign countries to those markets.

(g) The types of ships engaged in the outbound Far East trade have been immeasurably improved as respects speed, carrying capacity, refrigerated space, tank facilities and other characteristics.

The foregoing benefits and advantages have resulted in the general enhancement of the prosperity and security of the United States and of all of the elements of the economy thereof.

Thirty-second: Promptly upon the approval of the Far East Conference Agreement, the benefits and advantages described in Paragraph Thirty-first of this answer began to be operative and came to be progressively enjoyed by American exporting interests until in or about the year [fol. 66] 1928. As an aid to the securing of such benefits and advantages by the elimination of uneconomic and destructive rate competition between the parties to the Far East Conference Agreement and the parties to an agreement known as the Pacific Westbound Conference Agreement, being U. S. Maritime Commission Agreement No. 57, the parties to the two said Conference agreements entered into a joint agreement dated March 2, 1925, which was duly approved by the United States Shipping Board and which provided that the parties to the two said Conference agreements might, as in said agreement stipulated, work cooperatively in the fixing of rates for the carriage of cargoes from Pacific Coast ports, on the one hand, and Atlantic Coast ports and Gulf of Mexico ports, on the other hand, to the various ports in the Far East. Said agree-

ment of March 2, 1925 contained, among others, a provision to the effect that neither Conference, party thereto, could reduce freight rates until thirty days after notice of such decrease should be given to the other conference.

Thirty-third: In or about the year 1928, a corporation, hereinafter referred to as the "First Outside Line", initiated a steamship service as a common carrier by water in the outbound Far East trade. Upon information and belief, the management of said First Outside Line was the predecessor in business of the Second Outside Line. The First Outside Line conducted its services by use of vessels owned by two ship-owning companies. Since the outbreak of the Second World War, said ship-owning companies discontinued furnishing vessels to the First Outside Line [fol. 67] and established a joint service in the outbound Far East Trade under their own management, and are now parties to the Far East Conference Agreement and are among the defendants named herein. Upon information and belief, the management of the said First Outside Line thereupon, through another corporate form, acquired vessels of its own and became and now is the Second Outside Line. Upon information and belief, the principal officers and those in executive charge of the business of the Second Outside Line and of the First Outside Line are identical and the policies and methods of business and competition are similar and have, with interruption only by the Second World War, been continuous.

Thirty-fourth: In or about the year 1928, the First Outside Line began and thereafter continued to engage in the practices, among others, (a) of quoting and charging freight rates fractionally under the rates fixed and established by the parties to the Far East Conference Agreement, and (b) offering to freight brokers exorbitant brokerages for diverting the cargoes of their principals to the First Outside Line. The practices of the First Outside Line resulted in a demoralization of the traffic in the outbound Far East Trade to such an extent that the exporters from the United States in said trade were unable to know from day to day what freights they would be required to pay for the transportation of their cargoes in the outbound Far East trade. The parties for the time being to the Far East Conference Agreement, as a means of eliminating said demoralization, invited and urged the First Outside Line to become a party [fol. 68] to the Far East Conference Agreement; but the

First Outside Line refused so to do unless, as a condition of its so doing, the Conference would agree that the First Outside Line might treat certain of its shippers preferentially. The parties for the time being to the Far East Conference Agreement refused to concede these illegal conditions.

Thirty-fifth: (a) That in or about the year 1929, in order to attempt a stabilization of the commerce between all United States ports and ports in the Far East, the parties for the time being to the Far East Conference Agreement and the parties to the Pacific Westbound Conference Agreement, acting under said joint agreement dated March 2, 1925, and not otherwise, established with respect to certain commodities two levels of rates, the lower of which was made available to all shippers who entered into an agreement with the parties to the said two Conference agreements, to ship their commodities by vessels of said parties. Similar agreements were entered into in the year 1930, with respect to a somewhat larger group of commodities.

(b) The establishment of said rates and the entry into said agreements proved incapable of eliminating said demoralization; and, in the premises, the parties for the time being to the Far East Conference Agreement determined that the competitive methods pursued by the First Outside Line required that said parties should be able to reduce the rates within the scope of their Conference agreement more speedily than was possible, because of said provision for [fol. 69] thirty days' notice, so long as said agreement dated March 2, 1925 continued in effect. Accordingly, in September 1930, the parties for the time being to the Far East Conference Agreement took measures to terminate said agreement dated March 2, 1925, and said agreement was thereupon so terminated.

(c) In or about February 1931, the said competition became so disruptive that nine of the eleven members of the Far East Conference gave notice under the Far East Conference Agreement of their withdrawal therefrom, to take effect on May 6, 1931, and said Far East Conference was threatened with extinction. Prior to the latter date, however, five of the nine members who had given such notice retracted the notices so given by them and in the following September three of the remaining four members rejoined the Conference in an effort to restore stability.



Thirty-sixth: Thereupon and in the years 1931, 1932, 1933 and 1934, the parties for the time being to the Far East Conference Agreement, acting pursuant to the Far East Conference Agreement and not otherwise, but without cooperation with the parties to any other conference agreement, established two levels of rates, known as contract and non-contract rates, with respect to certain commodities and made the lower or contract rates available to all shippers of such commodities who would enter into the forms of agreement adopted in said respective years, providing in substance that the shippers of such commodities would ship the same to ports in the Far East exclusively by the vessels owned and/or operated by the parties to the Far East Conference Agreement.

[fol. 70] Thirty-seventh: Notwithstanding the measures taken as aforesaid, the conditions prevailing in the commerce in the outbound Far East trade had, due to the competitive methods of the First Outside Line, deteriorated to such an extent by March 1934, that the Department of Commerce, Shipping Board Bureau, which then exercised the jurisdiction now vested in the United States Maritime Commission, on its own motion, instituted an investigation pursuant to the provisions of Section 19 of the Merchant Marine Act, 1920, to determine what rules and regulations it might promulgate to correct or to alleviate the disruptive conditions brought about as aforesaid. As the result of the said investigation, the said Shipping Board Bureau promulgated its report in a proceeding known as "Docket 128-Investigation-Section 19 of the Merchant Marine Act, 1920"; which is reported at U. S. Maritime Commission 470. In said report, the said Shipping Board Bureau fully described and thereupon condemned the said disruptive competitive methods of the First Outside Line and the effects thereof on the commerce of the United States. The defendant respectfully asks leave to, and does hereby, incorporate herein by reference the aforesaid report of the said Shipping Board Bureau.

Thirty-eighth: As the result of said investigation, the said Shipping Board Bureau determined that its powers in the premises were limited to the issuance of an order, which it thereupon issued, requiring common carriers in outbound trades from United States ports, to file with it, within thirty

days after adoption, copies of their tariffs and modifications thereof.

[fol. 71] Thirty-ninth: Inasmuch as such filing was not required to be made until thirty days after the adoption of the respective rates, the said order resulting from said investigation, although affording some relief, was not adequate to remedy the conditions which afflicted the commerce of the United States as aforesaid.

Fortieth: Under the circumstances aforesaid, and acting pursuant to the Far East Conference Agreement and not otherwise, (a) the parties to the Far East Conference Agreement, in the years 1935 and 1936, continued the establishment of tariffs with respect to an increasing number of the commodities moving in the Far East trade at two levels of rates—contract rates and non-contract rates—of which the contract rates were lower, and made said contract rates available to all shippers of the commodities with respect to which contract rates were established, who should enter into an agreement with the parties for the time being to the Far East Conference Agreement, to the effect that such contracting shippers would ship all of their said commodities destined for ports in the Far East by vessels owned and/or operated by the parties for the time being to the Far East Conference Agreement; (b) in or about the year 1937, changed the form of said contract with said shippers so that the same became in substance the Far East Freight Agreement which, with various changes and amendments, resulted in the form attached to the complaint and marked Exhibit B; and (c) in or about the month of March, 1936, and continuously thereafter, made note of the application of the said contract and non-contract rates in their Conference tariffs and duly filed successively with the United States Shipping Board Bureau of the Department of Commerce and with the United States Maritime Commission said tariffs, said successive forms of the Far East Freight Agreement, and minutes of all Conference meetings at which such tariffs and/or agreement forms were adopted or amended. The form of Far East Freight Agreement which was in effect prior to the outbreak of the Second World War, provided that the rates of freight could be increased only after ninety days' notice to the shipper, and that the agreement could be cancelled only on ninety days' notice. In September 1939, at the outbreak of said War,

and due to the conditions incident to the War and the measures taken by the various governments in connection therewith, the said ninety day periods were respectively shortened to thirty days. The present parties to the Far East Conference Agreement have duly taken action to amend the outstanding Far East Freight Agreements, effective December 1, 1948, and to change the form thereof with respect to shippers who shall enter therein subsequent to December 1, 1948, so that the same shall be in accordance with the form hereto attached, marked Exhibit 1, and made a part of this answer.

Forty-first: The parties to the Far East Conference Agreement enter into Far East Freight Agreements with, and make contract rates available to, all shippers in the outbound Far East trade who desire to enter into such agreements without preference or discrimination; and at all of the times mentioned in the paragraphs hereof numbered Thirty-fifth (a), Thirty-sixth and Fortieth, have entered into the agreements therein referred to with, and made the contract rates available to, all shippers in the outbound Far East trade without preference or discrimination.

[fol. 73] Forty-second: Notwithstanding the beneficial effects of the order entered by the United States Shipping Board Bureau of the Department of Commerce in Docket 128 as aforesaid, and notwithstanding the action taken by the parties from time to time to the Far East Conference Agreement as aforesaid with respect to the establishment of contract and non-contract rates, conditions of stability had not returned in the Far East trade at the time of the outbreak of said War in 1939. As shippers and exporters generally came to appreciate the disruptive effect upon their affairs of the continuance of the conditions aforesaid, they, in increasing numbers, became parties to Far East Freight Agreements, with the result that, since the cessation of hostilities, the major portion of the export commerce of the United States in the outbound Far East trade, is transported under and pursuant to Far East Freight Agreements.

Forty-third: As a result of the adoption of the Far East Freight Agreement and the application thereunder of said contract rates, the Far East Conference has, since the termination of hostilities, again been able to establish conditions substantially as they existed prior to 1928 in the out-



bound Far East trade, and to extend to the merchants, farmers and manufacturers of the United States the advantages arising from conference action, including those enumerated in the paragraph hereof numbered Thirty-first.

Forty-fourth: The United States Maritime Commission and its predecessors in authority have repeatedly upheld the establishment of contract and non-contract rates and the use in connection therewith of agreements of the character represented by Exhibit B annexed to the complaint and more particularly of a character represented by Exhibit 1 hereto attached as constituting a proper practice by conferences acting pursuant to agreements approved under Section 15 of the Shipping Act, 1916, so long as said respective conferences should permit full and equal participation therein by all common carriers in the respective trades who should give evidence of ability and intention in good faith to establish and/or maintain a regular and dependable service in the respective trades. Such rulings on the part of the said Maritime Commission and its said predecessors are to be found, among others, in the following of their official reports:

Docket No. 80. *The W. T. Rawleigh Co. v. M. V. Stoomvaart Mij. "Nederland", et al.*, 1 USSB 285 (1933);

Docket No. 648. *Pacific Coast/European Conference Agreement*, 3 USMC 11 (1948);

Docket No. 423. *Phelps Bros. & Co., Inc. v. Cosulich-Societa, etc.*, 1 USMC 634 (1937);

Docket No. 515. *Sprague Steamship Agency, Inc. v. A/S Ivarrens Rederi, et al.*, 2 USMC 72 (1939).

Forty-fifth: Pursuant to said rulings of the United States Maritime Commission, conferences in many of the most important trades have adopted such rates and similar contracts; and the welfare and stability of an important part of the commerce of the United States is dependent upon the continuance thereof.

Forty-sixth: It would be economically impossible for the defendants to continue to afford to the merchants, farmers and manufacturers who ship their merchandise in the outbound Far East trade, the advantages of conference operation, including those enumerated in Paragraph Thirty-first, without tariffs of the type adopted by the Far East Conference as aforesaid and without said Far East Freight

[fol. 75] Agreement. The defendants have invested, and if their frequent service with speedy and especially adapted vessels is to be maintained, must continue to invest, large sums of money in the construction of progressively more modern vessels. Such investment would be discouraged or halted unless the steamship owners are assured of the regular patronage of a considerable body of shippers at compensatory rates of freight. Although the shippers in every industry benefit when all of them are charged fair and reasonable rates of freight with stability maintained over long periods of time, nonetheless, the individual shipper, when offered an opportunity to ship at fractionally lower rates, tends to seek this advantage over his competitors and these competitors are thereby of necessity compelled, likewise, to seek similarly lowered shipping charges. As a consequence, unless such contract and non-contract tariffs are maintained, disruptive conditions such as those described in said Docket 128—Investigation-Section 19 Merchant Marine Act, 1920 will prevail, with the result that (a) the weaker steamship lines who are unable to endure cut-throat competition will be eliminated, and (b) the remaining Conference members, faced by a reduction of their revenues to the point where they cease to provide compensation for the regular and speedy services which had theretofore been maintained, will be forced to choose between abandoning their services in the trade altogether and conducting them with little or no regularity and with inferior tonnage, so that the service rendered will be commensurate with the compensation received.

[fol. 76] Forty-seventh: The exporters of agricultural and industrial products from British and European ports to the Far East market enjoy all of the benefits arising from ocean freight rates fixed by Conference action, including those enumerated in Paragraph Thirty-first, for the reason, among others, that the laws of Great Britain and of the continental European Countries permit the Conferences to avail themselves not alone of the practice of adopting contract and non-contract rates, the former of which are available to shippers who enter into contracts of a purport generally similar to Exhibit B annexed to the complaint, but also permit the parties to Conference agreements to adopt other methods of avoiding destructive and disruptive competition which have been rendered illegal by the Ship-

ping Act, 1916, as amended. Unless the defendants are permitted to continue the practice of adopting contract and non-contract rates, accompanied by agreements such as Exhibit B annexed to the complaint or Exhibit 1 hereto annexed, the shippers of the products of American factories and farms, being deprived of said advantages, will be unable to compete with the exporters of such products from Great Britain and Europe and will be unable to compete fairly among themselves because of the inevitable discriminations and fluctuations in freight rates which would result.

Forty-eighth: At all times since the establishment of the tariffs of rates as aforesaid and the adoption of said Far East Freight Agreement, the rates of freight from time to time established by the parties to the Far East Conference Agreement have been fair and reasonable and have been applied without preference or discrimination.

[fol. 77] Forty-ninth: By reason of the premises, (a) to the extent, if any, that the acts of the defendants alleged in the complaint have effected any restraint of the foreign trade and commerce of the United States, said restraint has been fair and reasonable and necessary in the interest of American industry, commerce and agriculture and of the common carriers in the outward Far East trade; and (b) all of the acts of the defendants alleged in the complaint have been done and performed under and pursuant to an agreement duly filed and duly approved in accordance with the provisions of Section 15 of the Shipping Act, 1916, as amended, and are accordingly excepted from the provisions of Sections 1 and 2 of the Act of July 2, 1890, as amended, known as the Sherman Antitrust Act.

As a Second Separate and Complete Defense, This Defendant Alleges:

Fiftieth: Heretofore and prior to January 12, 1948, a number of common carriers by water in the trade between United States Pacific Coast ports and European ports, filed with the United States Maritime Commission for approval pursuant to the provisions of Section 15 of the Shipping Act, 1916, as amended, an agreement known as the Pacific Coast/European Conference Agreement, being Agreement Nos. 5200 and 5200-2.

\*Fifty-first: The United States Maritime Commission duly instituted an investigation upon its own motion to deter-



mine whether the said agreements should be approved or disapproved.

[fol. 78] Fifty-second: Upon information and belief, the Antitrust Division of the United States Department of Justice intervened in said proceeding and challenged the legality of the practice of the Pacific Coast/European Conference in charging for transportation at two levels of rates and of obtaining from their shippers contracts of the general character of that represented by Exhibit B attached to the complaint, on the ground that these practices are monopolistic, result in different rates for identical services and because the contract with the shipper is not subject to approval under Section 15 of the Shipping Act, 1916, and therefore is not subject to exemption from the Antitrust Act and for other reasons.

Fifty-third: Upon information and belief, the United States Maritime Commission, subject to an amendment of the form of freight contract to be tendered to shippers, overruled the objection of the Antitrust Division of the Department of Justice on the ground that the members of the Conference had at no time denied membership to any applicant carrier, and that the contract rate system is a necessary practice in the trade to secure the continuance of the Conference; the frequency, dependability and stability of service; and the uniformity and stability of freight rates.

Fifty-fourth: Upon information and belief, said antitrust Division of the United States Department of Justice has taken no action to obtain judicial review of the aforesaid determination of the United States Maritime Commission.

[fol. 79] As a Third Separate and Complete Defense, This Defendant Alleges:

Fifty-fifth: This defendant repeats Paragraphs Twenty-third to Forty-ninth, both inclusive, of this answer.

Fifty-sixth: This defendant alleges that under the provisions of the Shipping Act of 1916 and the Merchant Marine Act of 1936, the exclusive preliminary power and jurisdiction is vested in the Maritime Commission to determine whether the Far East Conference agreement made by the defendants, to which reference is made in the complaint, is a lawful agreement, and whether or not the contract rates and the other rates established by the defendants in the manner provided by said agreement are just and reasonable

and in all respects lawful, and whether or not the Far East Freight Agreements above mentioned are in all respects lawful agreements, and also whether or not the conduct of the defendants mentioned in the complaint is in all respects lawful.

Fifty-seventh: That such determination depends upon a consideration by said Commission of the economic relations of facts peculiar to the business of the defendants, of competitive conditions in respect of shipping to foreign countries and of all relevant circumstances unfamiliar to a judicial tribunal, but well understood by said Commission.

Fifty-eighth: In view of the provisions of said Act of 1916 and said Act of 1936, this court is without power or jurisdiction to consider or determine in this cause the legality of said agreements or of the contract rates, or other rates established by the defendants in the manner provided by said Far East Conference agreement, or of any of the acts of the defendants mentioned in said complaint.

[fol. 80] Fifty-ninth: The said Maritime Commission has duly approved the said Far East Conference agreement and has not disapproved any of said agreements or the contract rates, or the other rates established by the defendants in the manner provided by said Far East Conference agreement or any of the conduct or acts done under said Far East Conference agreement by any of the defendants herein, although said Maritime Commission has, at all times, been fully informed as to such rates, conduct and acts.

As a Fourth Separate and Complete Defense, This Defendant Alleges:

Sixtieth: The complaint fails to state a claim against this defendant upon which relief can be granted.

As a Fifth Separate and Complete Defense, This Defendant Alleges:

Sixty-first: This Court lacks jurisdiction over the subject matter of this action (a) because agreements between common carriers by water in foreign commerce in respect of competition and cooperative arrangements and the fixing of rates and the establishment of tariffs and of the rules and regulations relative to the application thereof, are within the exclusive jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended,

(b) because the alleged acts of the defendants as set forth in the complaint are claimed to have occurred in respect of matters subject to the exclusive jurisdiction, supervision and regulation of the United States Maritime Commission which is authorized by law to afford a complete remedy by [fol. 81] means of investigation, decision and appropriate order, (c) because the plaintiff has no right to apply to this Court for injunctive relief in advance of investigation, decision and order by the United States Maritime Commission with respect to the matters alleged in the complaint, or in advance of any violation by the defendants of such order as the United States Maritime Commission might make pursuant to such investigation, and (d) because a judicial remedy does not lie in such case until the administrative remedy before the United States Maritime Commission shall have been finally and completely exhausted.

As a Sixth Separate and Complete Defense, This Defendant Alleges:

Sixty-second: The plaintiff has a full, adequate and complete remedy at law before the United States Maritime Commission.

Wherefore, the defendant prays judgment that the complaint herein be dismissed.

Dated: October 4, 1948.

Stryker, Tams & Horner, By: Josiah Stryker, a member of the Firm, Solicitors for Defendant, Isthmian Steamship Company, Office & P. O. Address 744 Broad Street, Newark 2, New Jersey.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 82]

EXHIBIT 1 TO ANSWER

Far East Freight Agreement

Contract No.

Memorandum of Agreement, made the      day of      , 19      , by and between      hereinafter called the Shipper, and Members of Far East Conference, designated below and hereinafter called the Carriers, it being understood and agreed to by the Shipper and by the Carriers that if the Far East Conference add any additional line or lines to their membership, such line



or lines shall thereby become party to this Agreement, and the Shipper shall have the right to request shipping space of such line or lines as in this Agreement provided; and should any line or lines cease to be members of said Conference, all future rights under this Agreement of such line or lines, and of the Shipper as to any such line or lines, shall thereupon terminate.

1. The Shipper, in consideration of the rates and other conditions stated herein agrees to forward by vessels of the Carriers all shipments made, directly or indirectly, by him, his agents, subsidiary, associated and/or parent companies and shipped from United States ports, excepting, however, Pacific Coast ports, to ports in Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China and Philippine Islands.

The commodities involved, the estimated quantities, and the rates and conditions to govern are shown on the attached supplement or supplements. It is mutually understood and agreed that if Shipper should subsequently forward any commodity other than those shown on attached supplement or supplements, said shipments are considered to be part of this Agreement, and therefore entitled to the lowest rate then in effect on such commodity without requiring Shipper to conclude a supplemental agreement with the Carriers.

2. The rates of freight named or provided for hereunder are subject to being increased reasonably from time to time by the Carriers giving the Shipper written notice thereof not less than ninety (90) days in advance of the increase. Increases shall be deemed accepted by the Shipper unless he notifies the Carriers to the contrary within thirty (30) days from the receipt of said notice. Within said thirty days, the Shipper may give the Carriers written notice of cancellation of this contract as of the effective date of the increased rate or rates, subject, nevertheless, to the option on the part of the Carriers, declarable not less than thirty (30) days prior to the effective date of the increase in rate or rates, either to accept the cancellation, or to continue this contract in force under the rates in effect at the date when the notice of increase shall have been given. Recognizing that it will be impracticable for the Carriers to give notices of increases of all rates to all contracting shippers, it is agreed that the Carriers shall furnish to the

Shipper notices of all increases in rates applicable only to the commodity or commodities specified in the attached supplement or supplements and such additional commodity or commodities as to which the Shipper shall have given written notice to the Chairman of the Far East Conference of his intention to ship.

Should the Carriers, during the term of this Agreement reduce rates on any commodities which are covered by the [fol. 83] attached supplement or supplements, or which are mentioned in any notice given by the Shipper to the Carriers as aforesaid, the Shipper shall be given the full benefit of such reduced rates during the period the same remain in effect; provided, however, that nothing herein contained is intended to preclude the Carriers from furnishing transportation for goods not intended for commercial or industrial use, shipped by governments, governmental agencies or public or private, national or international, charitable, eleemosynary or humanitarian agencies, or religious or missionary societies, at rates lower than the rates herein provided for; and if the Carriers do so carry at such lower rates, the Shipper shall have no right hereunder to require the Carriers to transport for the Shipper at such lower rates.

3. The Carriers undertake, throughout the period of this Agreement, to maintain a steamship service which shall, so far as concerns the frequency of sailings and the carrying capacity of their vessels, be adequate to meet all of the reasonable requirements of the commerce of the United States moving in the trades specified in Paragraph 1 hereof; and the Carriers further agree that, subject to the availability of unbooked space in the vessels of the Carriers at the time when the Shipper applies therefor, the vessels of the Carriers shall, subject to the provisions of Paragraph 5 hereof, transport the cargoes of the Shipper in the aforesaid trade, upon the terms and conditions herein set forth.

The Shipper shall have the option of selecting any of the vessels operated by any of the respective Carriers who at time of shipment are Members of the Far East Conference, provided that the required space to port of destination is available in the vessels selected either direct or with trans-shipment at the time when the Shipper makes application therefor. The Shipper shall be required to reach agreement with the respective Carriers as to the

quantity to be shipped per vessel, port or ports of loading, port or ports of discharge, and to apply for freight space as long prior to the vessel's advertised sailing date is practicable. If the Carriers do not furnish space after the Shipper duly applies therefor, the Shipper shall be free, with respect to such shipment, to secure space elsewhere without prejudice to his right to future shipments under this Agreement, provided that the Shipper first notifies the Chairman of the Far East Conference at New York and allows the Chairman forty-eight (48) hours from the receipt of such notice to confirm that such space is not available.

4. If, at any time, the Shipper shall make any shipment or shipments in violation of any provision of this Agreement, the Shipper shall pay liquidated damages to the Conference in lieu of actual damages which would be difficult or impracticable to determine. Such liquidated damages shall be paid in the amount of freight which the Shipper would have paid had such shipment or shipments moved via a Conference Carrier computed at the contract rate or rates currently in effect. Failure of the Shipper to pay liquidated damages within thirty (30) days after the receipt of notice from the Conference that such liquidated damages are due and payable shall be cause for the Conference to terminate the Shipper's right to the contract rates until the Shipper pays to the Conference the amount due. In the event the Shipper violates this contract more than once in any period of twelve months, the Conference may cancel this contract by serving written notice of such [fol. 84] cancellation upon the Shipper and notifying the Maritime Commission of such action. If the Contract is cancelled for violation thereof as provided herein, the Conference may refuse to enter into a new contract with the Shipper until any unpaid liquidated damages due to the Conference have been paid in full.

In order that the Conference may determine the existence or non-existence of a violation hereof, the Shipper shall, upon request, furnish to the Conference full and complete information with respect to any shipment or shipments made by such Shipper in the trade covered by this Agreement.

5. Shipments under this Agreement are subject to all the terms and conditions contained in the respective Carrier's engagement note, permit, dock receipt and/or regu-



lar form of bill of lading, in use by the Carrier when shipments are tendered.

6. In the event of any hostilities breaking out or threatening to break out, in which the United States and/or Great Britain and/or Japan and/or China and/or Indo-China and/or Russia and/or their Colonies are involved, or by which the Carriers' interests are affected, the Carriers have the option of cancelling this Agreement.

7. In compliance with Section 16 of the "Shipping Act, 1916," payment by the Carriers and the acceptance of freight brokerage by the broker is with the strict understanding that no part of the brokerage thus collected shall revert to the Shipper, or to the consignee, and that the business of the broker is in no sense subsidiary to or affiliated with that of the Shipper or of the consignee.

8. Any disputes between the parties hereto arising out of this Agreement or involving the interpretation or effect thereof, shall be referred to a board of three arbitrators, one of whom shall be appointed by the Shipper, the second of whom shall be appointed by the Carriers, and the third of whom shall be appointed by the two arbitrators appointed as aforesaid. The decision of any two of said arbitrators with respect to any matter submitted to them as aforesaid, including, but without limitation, the amount of damages arising from any breach of this Agreement, shall be final and binding upon the Shipper and the Carriers and, for the purpose of enforcing any such award, the same shall be made a rule of the Court.

9. This Agreement, subject to the conditions set forth herein, may be terminated upon ninety (90) days written notice by the Shipper, or by all of the Carriers, or by any one or more of the Carriers (in which case such cancellation shall be effective only as to the notifying Carriers). If this Contract shall be terminated as to some, but not all, Carriers, the Shipper shall be at liberty to ship by such terminating Carriers so long as such terminating Carrier or Carriers remain members of the Far East Conference without thereby violating this Contract.

10. In the event of threat, existence or continuance of any present or future war or war-like conditions or hostilities or civil commotion, or measures taken by any Government in consequence thereof or in connection therewith, or the existence or continuance of conditions which, in the opinion of any one or more of the Carriers, indicates that

there is a danger of any of the foregoing, which may [fol. 85] impede, obstruct or delay, or render impossible or hazardous performance of its or their obligations due to the requisition, seizure or loss of any of the vessels of any one or more of the Carriers, or any other cause whatsoever whether similar or dissimilar, or which, in the sole judgment of any one or more of the Carriers, may directly or indirectly result in the imposition upon it or them of any undue financial or other hardship or burden in the performance of its or their obligations, any one or more of the Carriers shall have the option of forthwith cancelling this Agreement as to it or them. If this Agreement shall be cancelled as to some but not all of the Carriers the Shipper shall be at liberty to ship by such cancelling Carrier or Carriers so long as such cancelling Carrier or Carriers remain members of the Far East Conference without thereby violating this Agreement.

11. It is agreed that the party herein referred to as the Shipper is not the agent or Broker for any principal, whether disclosed or undisclosed, and that no party who is not named herein or at the foot hereof shall have any rights as Shipper by virtue hereof.

List of Carriers:

(Shipper)

By

Title

(Address of Shipper)

Subsidiary, Associated and/or  
Parent Companies:

For and on Behalf of Members  
of Far East Conference:

By

Chairman

11 Broadway, New York 4,  
N. Y.

(Address of Shipper Must be Shown on Contract)

[fol. 86] IN THE DISTRICT COURT OF THE UNITED STATES  
IN THE DISTRICT OF NEW JERSEY

[Title omitted]

NOTICE OF MOTION—Filed December 29, 1949

To: Elkan Turk, Of Counsel for Defendants Far East Conference, et. al., No. 120 Broadway, New York, New York

Please take notice that the undersigned will bring the motion for judgment on the pleadings heretofore filed in this action on for hearing before this Court in Courtroom No. 5, United States Post Office Building, City of Newark, on the 3rd day of January, 1950, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Joseph E. McDowell, Trial Attorney, Attorney for Plaintiff

3 Clerk's Certificate to foregoing paper omitted in printing.

#### Certificate of Service

I hereby certify that I have this day served the foregoing this proceeding, by mailing via first-class mail, postage notice of motion upon all parties of record appearing in prepaid, a copy thereof, properly addressed, to each such party.

Joseph E. McDowell, Trial Attorney

Dated at Washington, D.C. this 21st day of December 1949. Room 3119, Department of Justice, Washington, D. C.



[fol. 87] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

MOTION TO DISMISS AND NOTICE OF MOTION—Filed January 4,  
1951

The defendants above named, other than Isthmian Steamship Company, hereby move the Court as follows:

A. To dismiss the action because the complaint fails to state a claim against the defendants upon which relief can be granted.

B. To dismiss the action because the complaint fails to state facts sufficient to show that the plaintiff has no remedy otherwise than in equity.

C. On the complaint and answer herein,

(1) to dismiss the action on the ground that this Court is without jurisdiction of the subject matter

(a) in that agreements between common carriers by water in foreign commerce in respect of competition and cooperative arrangements and the shipping contracts and other practices adopted by such carriers in connection with rates established by them pursuant to such agreement between common carriers by water in the foreign commerce are within the exclusive jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended; and

(b) in that the alleged practices of the defendants mentioned in the complaint are within the exclusive jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended; and

[fol. 88] (c) in that the alleged acts of the defendants set forth in the complaint are alleged to have occurred in respect of matters subject to the jurisdiction, supervision and regulation of the United States Maritime Commission, which is authorized by the Shipping Act, 1916, as amended, to afford complete remedy by means of investigation, decision and appropriate order; and

(d) in that the acts alleged in the complaint constitute charges of violations of the provisions of the

Shipping Act, 1916, as amended, which, to the extent of said acts and charges, supercedes the antitrust laws mentioned and referred to in the complaint and the remedy for said acts and charges is that afforded by the Shipping Act, 1916, as amended; and

(e) in that this Court has no power by way of injunction in advance of investigation, decision and order by the United States Maritime Commission in respect of the acts and charges alleged in the complaint or in advance of any violation by the defendants of such order as the United States Maritime Commission might make pursuant to such investigation and decision, or, in the alternative,

(2) to stay and suspend all proceedings herein until

(a) such time as the United States Maritime Commission, in an appropriate proceeding instituted therefor, shall have investigated the acts, matters and charges alleged in the complaint, and shall have made its decision and order with respect thereto pursuant to the primary jurisdiction thereunto vested in the United States Maritime Commission by law; and

(b) the plaintiff shall have completely exhausted all administrative remedies in such case made and provided.

#### NOTICE OF MOTION

Please Take Notice, that the undersigned will bring the above motion on for hearing before this Court in Courtroom No. 5, United States Post Office Building, Newark, New Jersey, on the 9th day of January, 1950, at 10:30 [fol. 89] o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Jersey City, N. J., January 3d, 1950.

Milton, McNulty & Angelli, By (S.) John Milton,  
Member of the Firm. Solicitors for defendants  
herein other than Isthmian Steamship Company,  
Office & P. O. Address, 1 Exchange Place, Jersey  
City, N. J.

To James E. Kilday, Esq., Asst. to the Attorney General  
and Joseph E. McDowell, Esq., Trial Attorney and Herbert  
A. Bergson, Esq., Asst. Attorney General, Room 3119, De-

partment of Justice, Washington, D. C.; Alfred E. Modarelli, Esq., U. S. Attorney, U. S. Post Office Building, Newark, N. J.; Stryker, Tafts & Horner, Esqs., Solicitors for defendant, Isthmian Steamship Company, 744 Broad Street, Newark, N. J.

Clerk's Certificate to foregoing paper omitted in printing

[fol. 90] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

MOTION TO DISMISS AND NOTICE OF MOTION—Filed January  
13, 1950

Isthmian Steamship Company, one of the defendants above named, hereby moves the Court as follows:

A. To dismiss the action because the complaint fails to state a claim against this defendant upon which relief can be granted.

B. To dismiss the action because the complaint fails to state facts sufficient to show that the plaintiff has no remedy otherwise than in equity.

C. On the complaint and answer herein,

(1) To dismiss the action on the ground that this Court is without jurisdiction of the subject matter—

(a) in that agreements between common carriers by water in foreign commerce in respect of competition and cooperative arrangements and the shipping contracts and other practices adopted by such carriers in connection with rates established by them pursuant to such agreement between common carriers by water in the foreign commerce are within the exclusive jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended; and

(b) in that the alleged practices of the defendants mentioned in the complaint are within the exclusive jurisdiction of the United States Maritime Commis-



sion under the Shipping Act, 1916, as amended; and [fol. 90a] (c) in that the alleged acts of the defendants set forth in the complaint are alleged to have occurred in respect of matters subject to the jurisdiction, supervision and regulation of the United States Maritime Commission, which is authorized by the Shipping Act, 1916, as amended, to afford complete remedy by means of investigation, decision and appropriate order; and

(d) in that the acts alleged in the complaint constitute charges of violations of the provisions of the Shipping Act, 1916, as amended, which, to the extent of said acts and charges, supersedes the antitrust laws mentioned and referred to in the complaint and the remedy for said acts and charges is that afforded by the Shipping Act, 1916, as amended; and

(e) in that this Court has no power by way of injunction in advance of investigation, decision and order by the United States Maritime Commission in respect of the acts and charges alleged in the complaint or in advance of any violation by the defendants of such order as the United States Maritime Commission might make pursuant to such investigation and decision, or, in the alternative,

(2). to stay and suspend all proceedings herein until

(a) such time as the United States Maritime Commission, in an appropriate proceeding instituted therefor, shall have investigated the acts, matters and charges alleged in the complaint, and shall have made its decision and order with respect thereto pursuant to the primary jurisdiction thereunto vested in the United States Maritime Commission by law; and

(b) the plaintiff shall have completely exhausted all administrative remedies in such case made and provided.

#### Notice of Motion

Please take Notice, that the undersigned will bring the above motion on for hearing before this Court in Courtroom No. 5, United States Post Office Building, Newark, New Jersey, on the 19th day of January, 1950, at 10:30 o'clock in

[fol. 91] the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Newark, N.J., January 10, 1950.

Stryker, Tams & Horner, By Josiah Stryker, Member of the Firm, Solicitors for Isthmian Steamship Company, one of the defendants, Office & P. O. Address, 744 Broad Street, Newark 2, New Jersey.

To: James E. Kilday, Esq., Asst. to the Attorney General, and Joseph E. McDowell, Esq., Trial Attorney, and Herbert A. Bergson, Esq., Asst. Attorney General, Room 3119, Department of Justice, Washington, D.C., Alfred E. Modarelli, Esq., U. S. Attorney, U. S. Post Office Building, Newark, N.J., Milton, McNulty & Augelli, Esqs., Solicitors for defendants other than Isthmian Steamship Company, 1 Exchange Place, Jersey City 2, N.J.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 92] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

MOTION AND NOTICE OF MOTION FOR LEAVE TO SERVE  
SUPPLEMENTAL ANSWER—Filed January 4, 1951

Upon the complaint and answer herein and upon the annexed petition of the defendants herein other than Isthmian Steamship Company, said defendants hereby move for leave to serve a supplemental answer herein, setting forth transactions and occurrences which have happened since the date of the service of the answer herein hereby sought to be supplemented. A copy of such supplemental answer is attached to the annexed petition.

Please take Notice, that the undersigned will bring the above motion on for hearing before this Court in Courtroom No. 5, United States Post Office Building, Newark, New

Jersey, on the 9th day of January, 1950, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Jersey City, N.J., January 3rd, 1950.

Milton, McNulty & Augelli, By John Milton, Member of the Firm, Solicitors for defendants herein other than Isthmian Steamship Company, Office & P.O. Address, 1 Exchange Place, Jersey City, N.J.

[fol. 93] To: James E. Kilday, Esq., Asst. to the Attorney General, and Joseph E. McDowell, Esq., Trial Attorney, and Herbert A. Bergson, Esq., Asst. Attorney General, Room 3119, Department of Justice, Washington, D. C., Alfred E. Modarelli, Esq., U.S. Attorney, U.S. Post Office Building, Newark, N.J., Stryker, Tams & Horner, Esqs., Solicitors for defendant, Isthmian Steamship Company, 744 Broad Street, Newark, N.J.

[fol. 94] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

PETITION FOR LEAVE TO FILE A SUPPLEMENTAL  
ANSWER—Filed January 4, 1951

Now come the defendants above named other than Isthmian Steamship Company, and petition this Honorable Court for leave to file a supplemental answer, and respectfully show:

1. That on or about August 6, 1948, the plaintiff above named filed its complaint against the above named defendants, alleging that certain acts on the part of the defendants constitute violations of Section 1 and Section 2 of the Act of July 2, 1890, as amended, known as the Sherman Anti-trust Act. That in the said complaint it was alleged that the defendants in this suit had entered into a conspiracy, and in Paragraph 34 of the complaint, it was alleged that the purpose and object of the conspiracy has been to drive out of and exclude from participation in the trade therein referred to as the "outbound Far East trade" and to



eliminate from competition therein, steamship lines not parties to the alleged unlawful combination and conspiracy and thereby to achieve and maintain a monopoly of the transportation of cargo in said trade. That in Paragraph 29 of the complaint, it was alleged that the membership of [fol. 95] the defendant, Far East Conference, includes all but one of the common carrier shipping lines regularly engaged in the transportation of property in said outbound Far East trade.

2. That thereafter and on or about October 1, 1948, your petitioners duly filed their answer to the aforesaid complaint. That at the time of the filing of the complaint, as aforesaid, and at the time of the filing of the answer, as aforesaid, it was true that all but one of the common carrier shipping lines regularly engaged in transportation of property in the outbound Far East trade were members of the aforesaid Far East Conference. That, accordingly, the answer of your petitioners admitted in Paragraph Nineteenth thereof, that the parties to the Far East Conference Agreement, at the time of the commencement of the suit, included all but one of the common carriers engaged with reasonable regularity in the transportation of property in the aforesaid trade, and in their affirmative defense, alleged in Paragraph Twenty-Eighth that only one common carrier not a party to the Far East Conference Agreement, was regularly operating in said trade and that such common carrier was believed by your petitioners to be the same party as that referred to in Paragraph 29 of the complaint.

3. That thereafter and in the month of October, 1949, other common carriers began operating regularly in the aforesaid trade. That said common carriers have since said date been dispatching, and are presently advertising further vessels for dispatch, in said outbound Far East trade at the rate of two or three vessels each month. That said common carriers have not applied for participation in the Far East Conference Agreement and are not parties to said agreement. That, therefore, the aforesaid allegations are no longer true.

[fol. 96] 4. That the circumstance of the institution of this service by these additional carriers is of the utmost materiality in this suit and that your petitioners therefore ask leave to allege said facts in a supplemental answer.

5. That the effect of the institution of such service by such

additional carriers is likewise of great materiality and should therefore likewise be alleged in the supplemental answer above referred to.

6. That your petitioners attached to their answer herein, marked Exhibit "1", a copy of the Far East Freight Agreement which they intended to bring into effect on December 1, 1948. That since the date of the filing of your petitioners' answer the said form of contract has become effective and is the form of Far East Freight Agreement presently in use. That your petitioners believe it essential that this further fact which has developed since the date of the joinder of issue, should be alleged in the supplemental answer.

7. That attached hereto and made a part hereof, marked Exhibit "A", is a copy of the supplemental answer which your petitioners ask leave to serve.

Wherefore, your petitioners respectfully pray that leave may be granted to them to serve and file a supplemental answer for the purpose of alleging matters of fact aforesaid.

Dated: Jersey City, N.J., January 3rd., 1950.

Milton, McNulty & Angelli, By John Milton, Member of the Firm, Solicitors for petitioners, Far East Conference, United States Lines Company, States Marine Corporation, M. V. Nonsuco Inc., Lancashire Shipping Co., Ltd., Skibsaktieselskapet Igadi, A. F. Klaveness & Co. A/S, The De La Rama Steamship Co., Inc., Waterman Steamship Corp. [fol. 97] ration, Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co., Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskapet Ivarans Rederi, Ellerman & Bucknall Steamship Co., Ltd., Fearnley & Eger, Wilhelmsens Dampskibsaktieselskab, Dampskibsselskabet Af 1912 A/S, The Bank Line, Ltd., The China Mutual Steam Navigation Co., Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco and A/S Dampskibsselskabet Svendborg, Office & P.O. Address, 1 Exchange Place, Jersey City, N.J.

I hereby certify that the foregoing is a True Copy of the original on file in my office. William H. Tallyn, Clerk, Per Minnie M. Spalletta, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

UNITED STATES OF AMERICA, Plaintiff,

v.

FAR EAST CONFERENCE, ET AL., Defendants

Supplemental Answer

Leave having been granted to them by this Honorable Court, the defendants, Far East Conference, United States Lines Company, States Marine Corporation, M. V. Nonsuco, Inc., Lancashire Shipping Co., Ltd., Skibsaktieselskapet Igadi, A. F. Klaveness & Co. A/S, The De La Rama Steamship Co., Inc., Waterman Steamship Corporation, Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co., Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskapet Ivarans Rederi, Ellerman & Bucknall Steamship Co., Ltd., Fearley & Eger, Wilhelmssens Dampskibsaktieselskab, Dampskibsselskabet Af 1912 A/S, The Bank Line, Ltd., The China Mutual Steam Navigation Co., Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco and A/S Dampskibsselskabet Svendborg, by their solicitors, Milton, McNulty & Angelli, further answering the complaint herein by this supplemental answer, allege:

One: Deny that the membership of the defendant, Far East Conference, includes all but one of the common carrier [fol. 99] shipping lines regularly engaged in the transportation of property in the outbound Far East trade, as alleged in the paragraph of the complaint numbered "29".

As and for a Supplement to the First Separate and Complete Defense Alleged in the Answer of the Above Named Defendants:

Two: Heretofore and in or about the month of October, 1949, certain common carriers (hereinafter collectively referred to as the "Additional Outside Carriers") which had



not theretofore regularly engaged in the transportation of property in the outbound Far East trade, instituted a new service as common carriers in said trade.

Three: Said Additional Outside Carriers have, since the institution of said service, conducted said service by sailings at the rate of two or three per month in said trade and are presently advertising future sailings at the same rate per month.

Four: Said Additional Outside Carriers have not applied to the parties to the Far East Conference Agreement for participation therein or for membership in the Far East Conference, and the Additional Outside Carriers are not parties to said Agreement or members of said Conference.

Five: On information and belief, said Additional Outside Carriers are, and since the institution of their service, have been carrying substantial quantities of cargo in the outbound Far East trade and said Second Outside Line continues to carry substantial quantities of cargo in said trade.

Six: On information and belief, the said Additional Outside Carriers have been enlisted to operate their vessels [fol. 100] in the outbound Far East trade by one corporation (hereinafter referred to as the "Agent") which is not a shipowner but which acts as Agent for the ship owners who from time to time, at the instance of the Agent, place their vessels on the berth for the carriage of cargo in the outbound Far East trade, and who, excepting for the berthing of their vessels as aforesaid, engage principally or exclusively in the ownership of vessels operated as tramps.

Seven: It is an economic factor in the competition among carriers of ocean-borne foreign commerce that anyone acting as agent for, or becoming the charterer of, tramp tonnage, can enter into immediate competition with existing carriers at times when attractive cargoes are offering, without making any capital investment whatsoever by way of plant, right of way or equipment; and, on information and belief, the Agent has instituted the service by said Additional Outside Carriers without the making of any capital investment for the purposes aforesaid or otherwise.

Eight: The volumes of cargoes offering for transportation in ocean-borne foreign commerce and particularly in the ocean-borne foreign commerce in the outbound Far

East trade, is, and historically has been, subject to the greatest fluctuations, with the result that at times there are cargoes sufficient to fill the holds of all ships available in the service at compensatory rates of freight, and at other times the cargoes offering are so meagre as to furnish only part cargoes for vessels even less in number than those regularly operated in the said trade by the parties to the Far East Conference Agreement.

[fol. 101] Nine: By reason of the premises, when the cargoes offering in the outbound Far East trade shall decrease, the Agent and the Additional Outside Carriers can withdraw from said trade without capital loss and without violation of any commitment or contract obligation to shippers; and at that time the parties to the Far East Conference Agreement will continue to operate while sustaining the losses incident to the contraction of cargoes and the decrease in freight rates which is caused by the decrease in the demand for space on ocean going vessels.

Ten: On information and belief, whereas the First Outside Line and the Second Outside Line are, and with the exception of a short period following the return of vessels to private operation in 1946 have been, fixing their rates for the carriage of all principal and most other commodities in the outbound Far East trade by deducting a fixed percentage from the rates shown in the filed tariffs for the time being in effect of the Far East Conference, the Additional Outside Carriers have, since the inception of their service, filed statements with the Maritime Commission, ship by ship, purporting to certify to the adherence by the said Additional Outside Carriers to current tariffs of the Far East Conference, with certain stated exceptions; but the said exceptions have included all or substantially all of the commodities which the Additional Outside Carriers have actually transported on the respective vessels in the outbound Far East trade; and as to said commodities so carried, the statements of exceptions filed by the Additional Outside Carriers have fixed freight rates substantially below the rates established by the current tariffs of the Far East Conference. Both the Second Outside Line and the Additional Outside Carriers are and have been paying to [fol. 102] brokers for the procurement of the cargoes of their principals, brokerages at rates far in excess of those permitted to be paid by members of the Far East Confer-

ence under the terms of the Far East Conference Agreement. The economic factors in the fixing of ocean freight rates in the foreign trades are such that, although steamship lines operating a minority of vessels can profitably operate at such reduced rates inasmuch as such rates attract full cargoes to them, nonetheless, if the parties to the Far East Conference Agreement should join the Second Outside Line and the Additional Outside Carriers in the reduction of said rates so that (on the assumption that, if the parties to the Far East Conference Agreement should so reduce their rates the Second Outside Line and the Additional Outside Carriers would not still further reduce their rates) all available cargoes would be borne ratably by all of the lines at such reduced rates, neither the members of said Conference nor said Second Outside Line nor said Additional Outside Carriers could earn compensatory freights or continue in profitable operation.

Eleven: On information and belief, the promulgation by the parties to the Far East Conference Agreement, acting pursuant to said Agreement, of tariffs providing for contract and non-contract rates, has not been restrictive of competition or monopolistic in tendency or in effect, in that said Second Outside Line has continued to remain in said outbound Far East trade and said Additional Outside Carriers have entered the same.

Twelve: On information and belief, by reason of the economic factors peculiarly applicable to ocean freight rate making and traffic, the said tariffs, so adopted by the parties to the Far East Conference Agreement, have had the effect of enabling the parties to the Far East Conference Agreement [fol. 103] went to retain a portion of the cargoes moving in the outbound Far East trade, which when freighted at the rates provided for in said tariffs, produced for the parties to said Far East Conference Agreement reasonably compensatory aggregate freights while at the same time permitting the Second Outside Line and the Additional Outside Carriers by using differentially lower rates in order to attract cargoes, likewise to earn compensatory aggregate freights.

Thirteen: On information and belief, in view of the entry into the trade as aforesaid by the said Additional Outside Carriers operating and fixing freight rates as aforesaid, a restraint upon the parties to the Far East Conference Agreement prohibiting them from pursuing the aforesaid



tariff practices under the terms of the Far East Conference Agreement would, as a matter of historically demonstrated ocean traffic and rate economics, have the effect of compelling the parties to the said Agreement to reduce their rates to meet the competition of the Second Outside Line and the Additional Outside Carriers who would in turn make further reductions. In the manner aforesaid, a rate war would ensue which would be monopolistic in its effects in that only the financially strongest of the lines engaged in the outbound Far East trade, whether parties to the Far East Conference Agreement or not, would survive, and financially weaker lines would be driven from the trade.

Fourteen: By reason of the premises, the tariff practices as aforesaid pursued under the Far East Conference Agreement by the parties thereto, are producing and, if permitted to continue undisturbed, will continue to produce stability of rates which is indispensable to enable American merchants, manufacturers and farmers to sell their products in the Far East market on customary business terms. On the other hand, a rate war would not only produce [fol. 104] the monopolistic effects among those conducting the transportation function to the Far East market, but would as well economically injure the commerce, industry and agriculture of the United States.

Fifteen: On December 1, 1948, the parties to the Far East Conference Agreement adopted the form of contract which is annexed to the answer of these defendants herein and marked Exhibit "1", as and for the uniform Far East Freight Agreement, and thereupon incorporated the same into, and the same became a part of, the tariff of the Far East Conference on file in the Office of Regulation, United States Maritime Commission, Washington, D. C., and said form of Agreement is and since December 1, 1948 has been the form of Far East Freight Agreement in use by the parties to the Far East Conference Agreement.

Dated: Jersey City, N. J., January 3, 1950.

Milton, McNulty & Angelli; by John Milton, Member of the Firm, Solicitors for the defendants other than Isthmian Steamship Company, Office & P. O. Address, 1 Exchange Place, Jersey City, N. J.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 105] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

MOTION AND NOTICE OF MOTION FOR LEAVE TO SERVE SUPPLEMENTAL ANSWER—Filed January 13, 1950

Upon the complaint and answer herein and upon the annexed petition of the Isthmian Steamship Company, one of the defendants herein, said defendant hereby moves for leave to serve a supplemental answer herein, setting forth transactions and occurrences which have happened since the date of the service of the answer herein hereby sought to be supplemented. A copy of such supplemental answer is attached to the annexed petition.

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in Courtroom No. 5, United States Post Office Building, Newark, New Jersey, on the 19th day of January, 1950, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Newark, N. J., January 10th, 1950.

Stryker, Tams & Horner; by Josiah Stryker, Member of the Firm, Solicitors for Isthmian Steamship Company, one of the defendants, Office & P. O. Address, 744 Broad Street, Newark 2, New Jersey.

[fol. 106] To: James E. Kilday, Esq., Asst. to the Attorney General, and Joseph E. McDowell, Esq., Trial Attorney, and Herbert A. Bergson, Esq., Asst. Attorney General, Room 3119, Department of Justice, Washington, D. C.; Alfred E. Modarelli, Esq., U. S. Attorney, U. S. Post Office Building, Newark, N. J.; Milton, McNulty & Angelli, Esqs., Solicitors for defendants other than Isthmian Steamship Company, 1 Exchange Place, Jersey City, N. J.

[fol. 107] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

PETITION FOR LEAVE TO FILE A SUPPLEMENTAL ANSWER—  
Filed January 13, 1950

Now comes the Isthmian Steamship Company, one of the defendants above named, and petitions this Honorable Court for leave to file a supplemental answer, and respectfully shows:

1. That on or about August 6, 1948, the plaintiff above named filed its complaint against the above named defendants, alleging that certain acts on the part of the defendants constitute violations of Section 1 and Section 2 of the Act of July 2, 1890, as amended, known as the Sherman Anti-trust Act. That in the said complaint it was alleged that the defendants in this suit had entered into a conspiracy, and in Paragraph 34 of the complaint, it was alleged that the purpose and object of the conspiracy has been to drive out of and exclude from participation in the trade therein referred to as the "outbound Far East trade" and to eliminate from competition therein, steamship lines not parties to the alleged unlawful combination and conspiracy and thereby to achieve and maintain a monopoly of the transportation of cargo in said trade. That in Paragraph 29 of the complaint, it was alleged that the membership of the defendant, Far East Conference, includes all but one of [fol. 108] the common carrier shipping lines regularly engaged in transportation of property in said outbound Far East trade.

2. That thereafter and on or about October 4, 1948, your petitioner duly filed its answer to the aforesaid complaints. That at the time of the filing of the complaint, as aforesaid, and at the time of the filing of the answer, as aforesaid, it was true that all but one of the common carrier shipping lines regularly engaged in transportation of property in the outbound Far East trade were members of the aforesaid Far East Conference. That, accordingly, the answer of your petitioner admitted in Paragraph Twentieth



thereof, that the parties to the Far East Conference Agreement, at the time of the commencement of the suit, included all but one of the common carriers engaged with reasonable regularity in the transportation of property in the aforesaid trade, and in its affirmative defense, alleged in Paragraph Twenty-ninth that only one common carrier not a party to the Far East Conference Agreement, was regularly operating in said trade and that such common carrier was believed by your petitioner to be the same party as that referred to in Paragraph 29 of the complaint.

3. That thereafter and in the month of October, 1949, other common carriers began operating regularly in the aforesaid trade. That said common carriers have since said date been dispatching, and are presently advertising further vessels for dispatch, in said outbound Far East Trade at the rate of two or three vessels each month. That said common carriers have not applied for participation in the Far East Conference Agreement and are not parties to said agreement. That therefore, the aforesaid allegations are no longer true.

[fol. 109] 4. That the circumstance of the institution of this service by these additional carriers is material in this suit and that your petitioner therefore asks leave to allege said facts in a supplemental answer.

5. That the effect of the institution of such service by such additional carriers is likewise material and should therefore likewise be alleged in the supplemental answer above referred to.

6. That your petitioner attached to its answer herein, marked Exhibit "1", a copy of the Far East Freight Agreement which it intended to bring into effect on December 1, 1948. That since the date of the filing of your petitioner's answer the said form of contract has become effective and is the form of Far East Freight Agreement presently in use. That your petitioner believes it essential that this further fact which has developed since the date of the joinder of issue, should be alleged in the supplemental answer.

7. That attached hereto and made a part hereof, marked Exhibit "A", is a copy of the supplemental answer which your petitioner asks leave to serve.

Wherefore, your petitioner respectfully prays that leave may be granted to it to serve and file a supplemental answer for the purpose of alleging matters of fact aforesaid.

Dated: Newark, N. J., January 10th, 1950.

Stryker, Tams & Horner; by Josiah Stryker, Member, of the Firm, Solicitors for Petitioner, Isthmian Steamship Company, Office & P. O. Address, 744 Broad Street, Newark 2, New Jersey.

I hereby certify that the foregoing is a True Copy of the original on file in my office.

William H. Tallyn, Clerk; by Minnie M. Spalletta, Deputy.

[fol. 110]

EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

UNITED STATES OF AMERICA, Plaintiff,

v.

FAR EAST CONFERENCE, ET AL., Defendants.

### Supplemental Answer

Leave having been granted to it by this Honorable Court, the defendant, Isthmian Steamship Company, by its solicitors, Stryker, Tams & Horner, further answering the complaint herein by this supplemental answer, alleges:

One: Denies that the membership of the defendant, Far East Conference, includes all but one of the common carrier shipping lines regularly engaged in the transportation of property in the outbound Far East trade, as alleged in the paragraph of the complaint numbered "29".

As and for a Supplement to the First Separate and Complete Defense Alleged in the Answer of the Above Named Defendant:

Two: Heretofore and in or about the month of October, 1949, certain common carriers (hereinafter collectively re-

ferred to as the "Additional Outside Carriers") which had not theretofore regularly engaged in the transportation of property in the outbound Far East trade, instituted a new service as common carriers in said trade.

Three: Said Additional Outside Carriers have, since the institution of said service, conducted said service by sail- [fol. 111] ings at the rate of two or three per month in said trade and are presently advertising future sailings at the same rate per month.

Four: Said Additional Outside Carriers have not applied to the parties to the Far East Conference Agreement for participation therein or for membership in the Far East Conference, and the Additional Outside Carriers are not parties to said Agreement or members of said Conference.

Five: On information and belief, said Additional Outside Carriers are, and since the institution of their service, have been carrying substantial quantities of cargo in the outbound Far East trade and said Second Outside Line continues to carry substantial quantities of cargo in said trade.

Six: On information and belief, the said Additional Outside Carriers have been enlisted to operate their vessels in the outbound Far East trade by one corporation (hereinafter referred to as the "Agent") which is not a ship-owner but which acts as Agent for the ship owners who from time to time, at the instance of the Agent, place their vessels on the berth for the carriage of cargo in the outbound Far East trade, and who, excepting for the berthing of their vessels as aforesaid, engage principally or exclusively in the ownership of vessels operated as tramps.

Seven: It is an economic factor in the competition among carriers of ocean-borne foreign commerce that anyone acting as agent for, or becoming the charterer of, tramp tonnage, can enter into immediate competition with existing carriers at times when attractive cargoes are offering, without making any capital investment whatsoever by way of plant, right of way or equipment; and, on information and belief, the Agent has instituted the service by said Additional Outside Carriers without the making of any capital investment for the purposes aforesaid or otherwise.

Eight: The volumes of cargoes offering for transportation in ocean-borne foreign commerce and particularly in the ocean-borne foreign commerce in the outbound Far



East trade, is, and historically has been, subject to the greatest fluctuations, with the result that at times there are cargoes sufficient to fill the holds of all ships available in the service at compensatory rates of freight; and at other times the cargoes offering are so meagre as to furnish only part cargoes for vessels even less in number than those regularly operated in the said trade by the parties to the Far East Conference Agreement.

Nine: By reason of the premises, when the cargoes offering in the outbound Far East trade shall decrease, the Agent and the Additional Outside Carriers can withdraw from said trade without capital loss and without violation of any commitment or contract obligation to shippers; and at that time the parties to the Far East Conference Agreement will continue to operate while sustaining the losses incident to the contraction of cargoes and the decrease in freight rates which is caused by the decrease in the demand for space on ocean going vessels.

Ten: On information and belief, whereas the First Outside Line and the Second Outside Line are, and with the exception of a short period following the return of vessels to private operation in 1946 have been, fixing their rates for the carriage of all principal and most other commodities in the outbound Far East trade by deducting a fixed percentage from the rates shown in the filed tariffs for the time being in effect of the Far East Conference, the Additional Outside Carriers have, since the inception of their service, filed statements with the Maritime Commission, ship by ship, purporting to certify to the adherence by the said Additional Outside Carriers to current tariffs of the Far East Conference, with certain stated exceptions; but the said exceptions have included all or substantially all of the commodities which the Additional Outside Carriers have actually transported on the respective vessels in the outbound Far East trade; and as to said commodities so carried, the statements of exceptions filed by the Additional Outside Carriers have fixed freight rates substantially below the rates established by the current tariffs of the Far East Conference. Both the Second Outside Line and Additional Outside Carriers are and have been paying to brokers for the procurement of the cargoes of their principals, brokerages at rates far in excess of those permitted to be paid by members of the Far East Conference under the terms of the Far East Conference Agreement. The economic factors in the fixing of ocean freight rates in the foreign trades are,

such that, although steamship lines operating a minority of vessels can profitably operate at such reduced rates inasmuch as such rates attract full cargoes to them, nonetheless, if the parties to the Far East Conference Agreement should join the Second Outside Line and the Additional Outside Carriers in the reduction of said rates so that (on the assumption that, if the parties to the Far East Conference Agreement should so reduce their rates the Second Outside Line and the Additional Outside Carriers would not still further reduce their rates) all available cargoes would be borne ratably by all of the lines at such reduced [fol. 114] rates, neither the members of said Conference nor said Second Outside Line nor said Additional Outside Carriers could earn compensatory freights or continue in profitable operation.

Eleven: On information and belief, the promulgation by the parties to the Far East Conference Agreement, acting pursuant to said Agreement, of tariffs providing for contract and non-contract rates, has not been restrictive of competition or monopolistic in tendency or in effect, in that said Second Outside Line has continued to remain in said outbound Far East trade and said Additional Outside Carriers have entered the same.

Twelve: On information and belief, by reason of the economic factors peculiarly applicable to ocean freight rate making and traffic; the said tariffs, so adopted by the parties to the Far East Conference Agreement, have had the effect of enabling the parties to the Far East Conference Agreement to retain a portion of the cargoes moving in the outbound Far East trade, which when freighted at the rates provided for in said tariffs, produced for the parties to said Far East Conference Agreement reasonably compensatory aggregate freights while at the same time permitting the Second Outside Line and the Additional Outside Carriers by using differentially lower rates in order to attract cargoes, likewise to earn compensatory aggregate freights.

Thirteen: On information and belief, in view of the entry into the trade as aforesaid by the said Additional Outside Carriers operating and fixing freight rates as aforesaid, a restraint upon the parties to the Far East Conference Agreement prohibiting them from pursuing the afore-[fol. 114a] said tariff practices under the terms of the Far East Conference Agreement would, as a matter of historically demonstrated ocean traffic and rate economics, have

the effect of compelling the parties to the said Agreement to reduce their rates to meet the competition of the Second Outside Line and the Additional Outside Carriers who would in turn make further reductions. In the manner aforesaid, a rate war would ensue which would be monopolistic in its effects in that only the financially strongest of the lines engaged in the outbound Far East trade, whether parties to the Far East Conference Agreement or not, would survive, and financially weaker lines would be driven from the trade.

Fourteen: By reason of the premises, the tariff practices as aforesaid pursued under the Far East Conference Agreement by the parties thereto, are producing and, if permitted to continue undisturbed, will continue to produce stability of rates which is indispensable to enable American merchants, manufacturers and farmers to sell their products in the Far East market on customary business terms. On the other hand, a rate war would not only produce the monopolistic effects among those conducting the transportation function to the Far East market, but would as well economically injure the commerce, industry and agriculture of the United States.

Fifteenth: On December 1, 1948, the parties to the Far East Conference Agreement adopted the form of contract which is annexed to the answer of these defendants herein and marked Exhibit "1", as and for the uniform Far East Freight Agreement, and thereupon incorporated the same into, and the same became a part of, the tariff of the [fol. 115] Far East Conference on file in the Office of Regulation, United States Maritime Commission, Washington, D. C., and said form of Agreement is and since December 1, 1948 has been the form of Far East Freight Agreement in use by the parties to the Far East Conference Agreement.

Dated: Newark, N. J., January 10, 1950.

Stryker, Tams & Horner, by Josiah Stryker, Member of the Firm, Solicitors for Isthmian Steamship Company, one of the defendants, Office & P. O. Address, 744 Broad Street, Newark 2, New Jersey.



[fol. 116] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

MOTION FOR JUDGMENT ON THE PLEADINGS—Filed December  
16, 1949

The United States of America, plaintiff, by its attorneys, acting pursuant to Rule 12 of the Federal Rules of Civil Procedure, moves this court for a judgment on the pleadings in favor of the United States on the ground that the pleadings by the defendants on file in this action establish that there is no genuine issue as to any material fact, and that on the undisputed facts the United States is entitled as a matter of law to the judgment for which it moves herein.

Dated:

James E. Kilday, Special Assistant to the Attorney General; Joseph E. McDowell, Trial Attorney; Herbert A. Bergson, Assistant Attorney General; Alfred E. Modarelli, United States Attorney.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 117] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

NOTICE OF MOTION FOR LEAVE TO INTERVENE—Filed January  
9, 1950

To: Alfred E. Modarelli, U. S. Attorney, U. S. Post Office Building, Newark, N. J.

Joseph E. McDowell, Special Assistant to Attorney General, Department of Justice, Washington 25, D. C., Attorneys for the United States of America.

Milton, McNulty & Angelli, Solicitors for defendants herein other than Isthmian Steamship Company, Office & P. O. Address, 1 Exchange Place, Jersey City, N. J.

Stryker, Tams & Horner, Solicitors for defendant, Isthmian Steamship Company, Newark, N. J.

Please take notice that the undersigned will bring the attached motion on for hearing before this Court in Courtroom No. 5, United States Post Office Building, Newark, New Jersey, on the 9th day of January, 1950, at 10:30 o'clock, A. M., or as soon thereafter as Counsel can be heard.

December 29, 1949.

United States Maritime Commission. By: (S.) Paul D. Page, Jr., Solicitor. By: (S.) George F. Gal-land, Washington 25, D. C.

[fol. 118] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS DEFENDANT

The United States Maritime Commission (hereinafter called "the Commission") moves, pursuant to Rule 24 (a) (2) and Rule 24 (b), Federal Rules of Civil Procedure, for leave to intervene as a defendant in this action in order to assert the defenses set forth in its proposed motion to dismiss the complaint, a copy of which is hereto annexed, the grounds of this motion being that (1) representation of the Commission's interest by existing parties is or may be inadequate and the Commission is or may be bound by the judgment in the action; (2) the Commission's defense and the main action have a question of law or fact in common; and (3) plaintiff in this action relies for ground of claim, and defendants rely for ground of defense upon provisions of the Shipping Act, 1916, as amended, which Act is administered by the Commission. Participation by the Commission as a party to this action will, it is believed, materially aid in the expeditious determination of the action and will in no way delay or prejudice the adjudication of the rights of the original parties.

December 29, 1949

United States Maritime Commission. By: (S.) Paul D. Page, Jr., Solicitor. By: (S.) George F. Gal-land, Washington 25, D. C.

[fol. 119] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

MOTION OF UNITED STATES MARITIME COMMISSION, DEFENDANT-INTERVENOR, TO DISMISS COMPLAINT—Filed January 9, 1950

The United States Maritime Commission, Defendant-Intervenor, moves pursuant to Rule 12 (b), Federal Rules of Civil Procedure, for an order dismissing the complaint herein upon the grounds that (1) this Court lacks jurisdiction over the subject matter of this action; and (2) the complaint fails to state a claim upon which relief can be granted. December 29, 1949.

United States Maritime Commission. By: (S.) Paul D. Page, Jr., Solicitor. By: (S.) George F. Galland, Washington 25, D. C.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 120] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

[Title omitted]

The defendants having moved this court on the 19th day of January, 1950, for leave to file supplemental answers, and there having been argument on the said motion on that date, and the said supplemental answers having been filed on that date but no order having been expressly made authorizing the filing of the said answers, application now being made by the defendants for an order nunc pro tunc approving and authorizing the filing of said supplemental answers on January 19th, 1950,

It is, on this 6th day of April, 1951

Ordered, that the filing by defendants on January 19th, 1950, of the above mentioned supplemental answers be and the same is hereby approved, and that said answers shall



be considered as though this order had been made on January 19th, 1950.

(S.) William F. Smith, U. S. D. J.

We hereby consent to the form of the above order.

(S.) James E. Kilday, Assistant to the Attorney General; (S.) H. G. Morison, Assistant Attorney General; (S.) Grover C. Richman, Jr., Acting U. S. [fol. 121] Attorney; Stryker, Tams & Horner, By (S.) Josiah Stryker, Member of the Firm, Solicitors for Isthmian Steamship Company, one of the defendants; Milton, McNulty & Angelli, By (S.) John Milton, Member of the Firm, Solicitors for defendants other than Isthmian Steamship Company; (S.) George Galland, Counsel for Federal Maritime Board.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 122] UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

[Title omitted]

ORDER OF SUBSTITUTION—February 13, 1951

Upon the annexed stipulation of the parties to this action, it is hereby,

Ordered that Federal Maritime Board be and it is hereby substituted in place of United States Maritime Commission as Defendant-Intervenor in this action.

William F. Smith, U. S. D. J.

February 13th, 1951.

[fol. 123] UNITED STATES DISTRICT COURT, DISTRICT OF NEW  
JERSEY

[Title omitted]

STIPULATION

It appearing that pursuant to Reorganization Plan No. 21 of 1950 (15 F. R. 3178), the United States Maritime Commission was abolished and its functions, insofar as they relate to this action, transferred to Federal Maritime Board,

It is hereby stipulated by and between the undersigned, that Federal Maritime Board may be substituted as defendant-intervenor in this action in place of United States Maritime Commission.

Paul D. Page, Jr., Solicitor; George F. Galland, Attorneys for Federal Maritime Board. Gareth M. Neville, Attorney for Plaintiff; Milton, McNulty & Angelli, Attorneys for Defendants other than Isthmian Steamship Company. Stryker, Tams & Horner, Attorneys for Isthmian Steamship Company.

February —, 1951.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 124] UNITED STATES DISTRICT COURT, DISTRICT OF NEW  
JERSEY

Civil No. 11546

UNITED STATES OF AMERICA, Plaintiff,

vs.

FAR EAST CONFERENCE, UNITED STATES LINES COMPANY,  
et als., Defendants.

OPINION—January 18, 1951

SMITH, District Judge:

This is a civil action for injunctive relief under Section 4 of the Sherman Act, 15 U. S. C. A. 4. The defendants are the Far East Conference, a voluntary association of

common carriers by water engaged in foreign trade, and the members of the association. The complaint, following a common pattern, charges that the defendants are "engaged in an unlawful combination and conspiracy in restraint of trade and commerce of the United States with foreign nations in the transportation of property in the outbound Far East trade," in violation of Section 1 of the Act, 15 U. S. C. A. 1. The defendants, except the Isthmian Steamship Company, have filed a joint answer; the Isthmian Steamship Company has filed a separate answer.

The action is before the Court at this time on two motions: first, a motion for judgment on the pleadings, filed by the plaintiff pursuant to Rule 12(c) of the Federal Rules of [fol. 125] Civil Procedure, and second, a motion to dismiss the action, filed by the defendants pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. We shall restrict this opinion to a discussion of the questions raised by the latter motion, in support of which there are two grounds urged: the lack of jurisdiction in the court, and the failure of the complaint to state a claim upon which relief can be granted. It should be noted that a similar motion has been filed by the United States Maritime Commission,<sup>1</sup> hereinafter identified as the Commission, which has been granted leave to intervene.

The jurisdiction of this Court is defined with particularity by Section 4 of the Sherman Act, 15 U. S. C. A. 4, which provides: "The several district courts of the United States are invested with jurisdiction to PREVENT AND RESTRAIN violations of sections 1-7 of this title." (Emphasis by the Court.) It should be noted that this section not only vests the district courts with equity jurisdiction but also imposes upon "the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General," the duty "to institute proceedings in equity to prevent and restrain such violations." The language of the statute is free from ambiguity and there can be no doubt as to either the right of the United States to maintain suits under the anti-

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<sup>1</sup>The functions of the United States Maritime Commission have been transferred to the Federal Maritime Board pursuant to the provisions of the Reorganization Act of 1949 and Reorganization Plan No. 21 of 1950.



trust laws or the jurisdiction of this court to entertain them.

The defendants do not deny that the allegations of the complaint are sufficient to charge violations of Section 1 of the Sherman Act. They argue that notwithstanding the express provisions of Section 4 of the said Act, *supra*, the exclusive primary jurisdiction of the present controversy is in the Commission under the Shipping Act of [fol. 126] 1916, 46 U. S. C. A. 801-842. We cannot agree. The latter Act is a comprehensive measure which vests in the Commission plenary authority to regulate common carriers by water engaged in foreign commerce, but even this authority is subject to the limitations prescribed by the Act. The mere fact that the shipping industry is subject to governmental regulation does not wholly exempt those engaged in it from the provisions of the Sherman Act. *Georgia v. Pennsylvania Railroad Co.*, 324 U. S. 439, 456; see also *United States Alkali Assn. v. United States*, 325 U. S. 196, 205, 206, *et seq.*; *United States v. Borden Co.*, 308 U. S. 188, 198, *et seq.*; *Keogh v. C. & N. W. Ry. Co.*, 260 U. S. 156, 161, *et seq.*; *United States v. Pacific & Arctic Co.*, 228 U. S. 87, 102, 105. The only exemption is that which is granted by a specific provision of the Shipping Act, but even this exemption may not be construed as a restriction on the jurisdiction of this court.

It is further argued that the conduct of the defendants and the practices in which they are concertedly engaged, here alleged to be in violation of the antitrust laws, are exempt under Section 15 of the Shipping Act, 46 U. S. C. A. 814. (The pertinent provisions of the statute are quoted in the annexed appendix.) This argument is based upon the admitted fact that the "Conference Agreement," pursuant to which the Conference was organized and under which its members have adopted a uniform system of dual rates, was approved by the Commission's predecessor, the Shipping Board, and conforms to the requirements of the said section. We concede that the Conference Agreement, having been approved by the Shipping Board, may be within the purview of the statutory exemption, but it does not follow that all conduct of the defendants and the practices in which they may be concertedly engaged are exempt from the provisions of Section 1 of the Sherman Act. See the cases hereinabove cited.

The defendants apparently misconceive the scope of the exemption granted them by Section 15 of the Shipping Act. This section vests in the Commission a limited authority [fol. 127] to approve only certain agreements<sup>2</sup> to which COMMON CARRIERS by water, or other PERSONS SUBJECT TO THE ACT, are parties and combinations organized pursuant thereto, agreements and combinations which might otherwise be illegal under Section 1 of the Sherman Act. (Emphasis by the Court.) The exemption is coterminous with this limited authority and extends only to agreements lawful under the section. The exemption does not extend to other agreements and combinations not clearly within its purview, agreements and combinations which may violate Section 1 of the Sherman Act.

The defendants likewise misconceive the effect of the specific immunity granted by the statute. They construe the exemptive provision, read in the light of the other provisions of the section, as a limitation on the jurisdiction of the court. We cannot adopt this construction. The exemptive provision makes available to the defendants a legal defense not otherwise available, but it does not curtail the authority vested in this court by the specific provisions of Section 4 of the Sherman Act. *United States v. Borden Co.*, *supra*, 201. The provisions of the Shipping Act, considered in the light most favorable to the defendants may not be interpreted as an implied repeal *pro tanto* of the jurisdictional provisions of the Sherman Act. It is well established that repeals by implication are not favored. *United States Alkali Assn. v. United States*, *supra*, 209; *United States v. Borden Co.*, *supra*, 198, *et seq.*

The second ground urged in support of the motion, to wit, failure of the complaint to state a claim upon which relief can be granted, is predicated substantially on the arguments hereinabove discussed. The defendants challenge the right of the United States to maintain this action, and for the same reasons urged in support of their attack upon the jurisdiction of the court. These arguments are without merit. The right of the United States to maintain [fol. 128] this action, like the jurisdiction of this court,

<sup>2</sup> Agreements "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; etc." (See Appendix.)

is derived from Section 4 of the Sherman Act. The exemption granted by Section 15 of the Shipping Act may be interposed as a substantive defense but it may not be raised as a procedural bar to the right of the United States to prosecute this action.

It is urged, but not argued too strenuously, that the only remedy available to the United States is that accorded by the Shipping Act. We find no provision therein which grants to the United States either the right or the privilege to invoke the jurisdiction of the Commission. Section 22 of the Act, 46 U. S. C. A. 821, reserves to "any person" a right to file "a sworn complaint setting forth any violation of" the Act, "and asking reparation for the injury, if any, caused thereby." The term "person" as therein used "includes corporations, partnerships, and associations existing under or authorized by" law, but it does not include the United States. The term "person" does not "include the sovereign, and statutes employing it will ordinarily not be construed to do so." *United States v. United Mine Workers*, 330 U. S. 258, 275; see also *United States v. Cooper Corp.*, 312 U. S. 600, 604, *et seq.* We find nothing in the Act which may be interpreted as a grant of a right, especially to the United States, to seek injunctive relief in a proceeding before the Commission.

The arguments advanced by the defendants suggest an irreconcilable conflict of jurisdiction, but we find no such conflict. We must concede that the Shipping Act vests in the Commission the authority to regulate common carriers by water and the power to enjoin obedience to its orders and compliance with the statutory provisions. The Sherman Act, however, is equally comprehensive and vests in the district courts plenary jurisdiction to enforce its provisions by injunction, a power not vested in the Commission. We find no provision in either statute which may be construed as an explicit limitation on either the right of the United States to maintain this action or the jurisdiction of this court to entertain it.

[fol. 129] The defendants rely primarily on the case of *United States Navigation Co. v. Cunard Steamship Co., et al.*, 284 U. S. 474, a case which is distinguishable from the present action. Therein a common carrier by water, aggrieved by practices in which other carriers were concertedly engaged, brought suit for injunctive relief under Section 16 of the Clayton Act, 15 U. S. C. A. 26. The



complaint admittedly charged violations of Section 1 of the Sherman Act. The Supreme Court held: "A comparison of the enumeration of wrongs charged in the bill with the provisions of the sections of the Shipping Act above outlined conclusively shows, without going into detail, that the allegations either constitute direct and basic charges of violations of these provisions or are so inter-related with such charges as to be in effect a component part of them; and the remedy is that afforded by the Shipping Act, which to that extent supersedes the antitrust laws." An examination of the case discloses that this conclusion was based upon the determination that the private litigant had not only an enforceable right under the Shipping Act but an adequate remedy; the right and the remedy are discussed by the Court at length on pages 483 and 484 of the opinion.

We find no provision in the Shipping Act which gives to the United States a similar right or remedy. We are informed by counsel for the Commission that the United States has been permitted to intervene in proceedings before the Commission, but even he does not suggest that this intervention was anything but permissive. It is our opinion that the provisions of the Sherman Act may be enforced by the United States only in the manner prescribed by that Act. There seems to be no other statutory remedy.

The motion to dismiss the complaint will be denied.

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Clerk's Certificate to foregoing paper omitted in printing.

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[fol. 130] MOTION FOR JUDGMENT ON THE PLEADINGS

The motion for judgment on the pleadings must be denied. It is our opinion that the present record will not support a determination that there is no genuine issue as to any of the material facts, a determination essential to the entry of judgment. The answers filed by the defendants raise issues of law and fact which should be decided only after a trial of the action on the merits. It is our opinion, however, that the case can be expeditiously tried on a stipulation of facts, and we recommend this procedure.

to the litigants. The parties may reserve the right to offer such evidence as may be necessary to complete the record thus made.

[fol. 131]

#### APPENDIX

Every common carrier by water, or other person subject to this chapter, shall file immediately with the commission a true copy, or, if oral, a true and complete memorandum, of every agreement, with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The commission may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors or to operate to the detriment of the commerce of the United States, or to be in violation of this chapter, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the commission shall be lawful until disapproved by the commission. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the commission.

All agreements, modifications, or cancellations made after the organization of the commission shall be lawful only when and as long as approved by the commission, and before approval or after disapproval it shall be un-

lawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of sections, 1-11 and 15 of Title 15, and amendments and Acts supplementary thereto.

[fol. 133] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 11546

UNITED STATES OF AMERICA, Plaintiff,

vs.

FAR EAST CONFERENCE, et al. Defendants.

ORDER—March 7, 1951

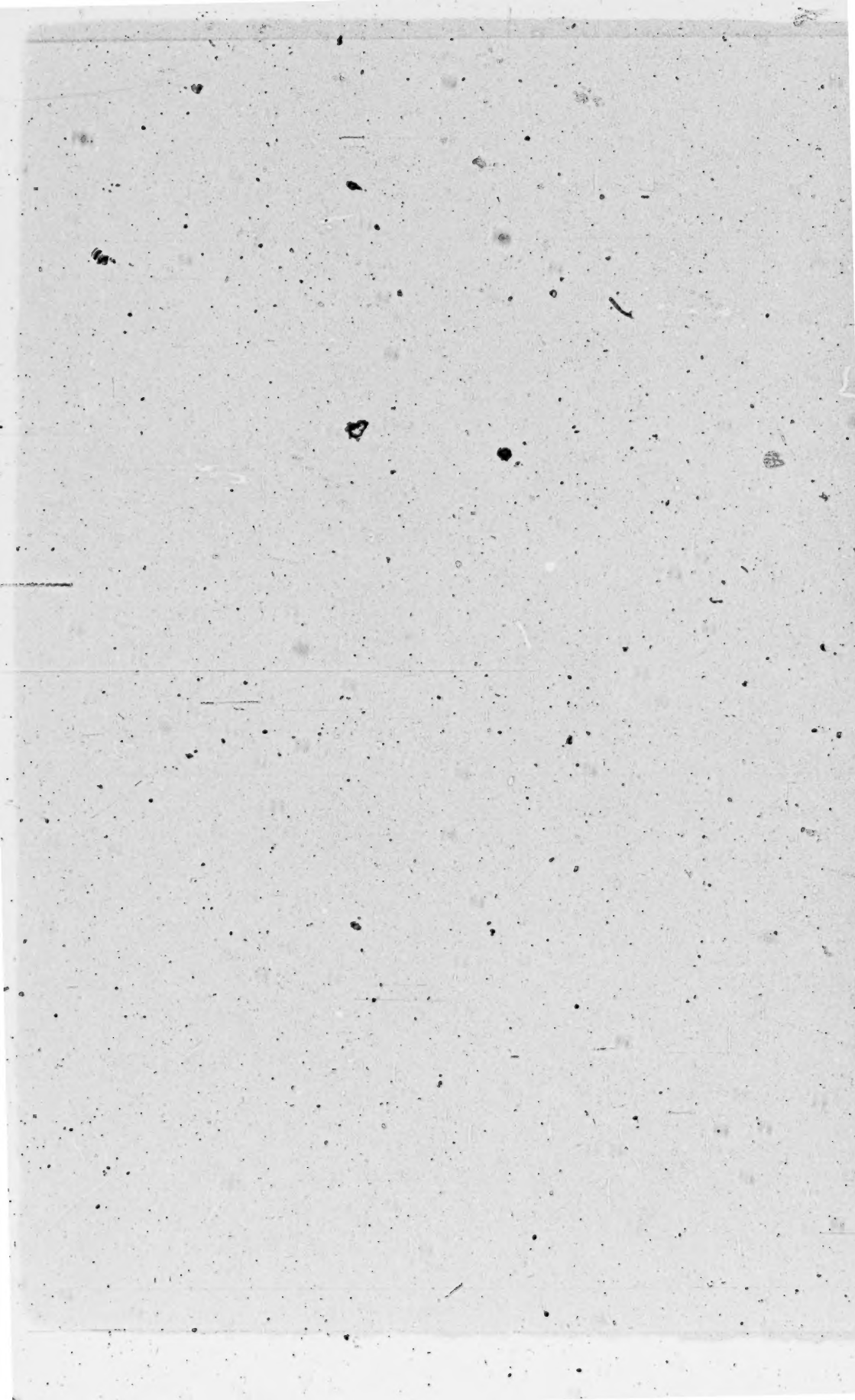
The parties herein, plaintiff, defendants, and intervenor, having respectively moved the court on the 19th day of January, 1950, as follows:

By plaintiff that judgment be entered in its favor on the pleadings theretofore filed, and by the defendants and intervenor (1) to dismiss the action upon the grounds that the court lacked jurisdiction over the subject matter, that the complaint fails to state facts upon which relief could be granted, that the complaint fails to state facts sufficient to show that the plaintiff has no remedy other than in equity, and that the alleged practices of defendants mentioned in the complaint are within the exclusive jurisdiction of the United States Maritime Commission under the Shipping Act as amended; or in the alternative (2) to stay and suspend all proceedings until

(a) Such time as United States Maritime Commission in an appropriate proceeding instituted therefor shall have investigated the acts, matters and charges alleged in the complaint and shall have made its decision and order with respect thereto pursuant to the primary jurisdiction thereunto vested in the United States Maritime Commission by law;







(b) Plaintiff shall have completely exhausted all administrative remedies in such case made and provided;

And the court having heard the argument of counsel and having read the briefs submitted in support thereof and being of opinion that all of the motions should be denied; [fol. 134] It is, on this 7th day of March, 1951,

Ordered, that all of the said motions by the plaintiff, defendants, and intervenor respectively, be and the same hereby are denied.

(S.) William F. Smith, U. S. D. J.

We hereby consent to the form of the above order.

(S.) James E. Kilday, Assistant to the Attorney General; (S.) H. Graham Morison, Assistant Attorney General; (S.) Grover C. Richman, Jr., Acting U. S. Attorney; Stryker, Tams & Horner, By (S.) Josiah Stryker, Member of the Firm, Solicitors for Isthmian Steamship Company, one of the defendants; Milton, McNulty & Augelli, By (S.) John Milton, Member of the Firm, Solicitors for defendants other than Isthmian Steamship Company; (S.) George F. Galland, Counsel for Federal Maritime Board.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 135] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO FILE PETITION FOR CERTIORARI AND GRANTING PETITION FOR CERTIORARI—  
October 8, 1951

On Consideration of the motion for leave to file a petition for writ of certiorari to the United States District Court for the District of New Jersey, it is ordered by this Court that the motion for leave to file a petition for writ of certiorari be, and it is hereby, granted. The petition for writ of certiorari is granted and the case is assigned for argument immediately following Nos. 134 and 135 *Rederi et al. vs. Isbrandsten Co., Inc., et al.*, and Federal Maritime Board vs. United States of America.

October 8, 1951.

Mr. Justice Clark took no part in the consideration or decision of this application.